

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Situation: Democratic Republic of the Congo

4 In the case of The Prosecutor v. Germain Katanga

5 and Mathieu Ngudjolo Chui - ICC-01/04-01/07

6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra

7 and Judge Christine Van den Wyngaert

8 Closing Statements

9 Wednesday, 23 May 2012

10 (The hearing starts in open session at 9.01 a.m.)

11 THE COURT USHER: All rise. The International Criminal Court is now in session.

12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.

13 Our hearing has now started. Good morning to everybody, good morning to the
14 accused.

15 Before giving the floor to the Defence team of Germain Katanga to give us certain
16 clarifications which we would like to ask for, Counsel O'Shea has expressed a wish to
17 make a correction to something that was said the day before yesterday morning. Please,
18 go ahead.

19 MR O'SHEA: Yes, good morning, your Honours. I would simply like to correct
20 something which I said at the very end of my presentation on Monday, which I read out
21 the incorrect passage in a case which I cited. I cited the case against Crown against
22 Woollin, in the first volume of the Appeal cases for 1999, and I read out the incorrect
23 passage. The passage which I should have read out is found on page 95 of that report at
24 paragraph (f), and reads as follows, "It follows that the judge should not have departed
25 from Nedrick direction by using the phrase 'substantial risk.' The judge

1 blurred the line between intention and recklessness and hence between murder and
2 manslaughter. The misdirection enlarged the scope of the mental element required for
3 murder."

4 I am afraid that I had to correct that because I had the fear that I may have otherwise
5 misled the Court. Thank you very much.

6 PRESIDING JUDGE COTTE: (Interpretation) So a correction has been made. Counsel
7 Kilenda.

8 MR KILENDA: (Interpretation) Given that there is this opportunity, I'd also like to
9 make a small correction myself. Please excuse me for not having informed you before I
10 took the floor.

11 PRESIDING JUDGE COTTE: (Interpretation) We shall be listening to you.

12 MR KILENDA: (Interpretation) Your Honours, I made also an error in the transcript,
13 339 is the transcript, page 55, line 24. So I was speaking about Witness 219, and instead
14 of saying "219" I said "279."

15 PRESIDING JUDGE COTTE: (Interpretation) Can you just say the page again? I
16 didn't manage to get it, I didn't hear it and the transcript hasn't appeared yet.

17 MR KILENDA: (Interpretation) So it's on page 55, line 24. Page 55. So I said it
18 should be "219" instead of "279."

19 PRESIDING JUDGE COTTE: (Interpretation) Understood.

20 MR KILENDA: (Interpretation) Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel Kilenda. So it is
22 "219" instead of "279. "279" appears later as well.

23 Counsel Hooper, we have yesterday, in the afternoon, as we did for the Prosecutor as well,
24 and also for Counsel Gilissen as well, we have asked for certain clarification from
25 everybody, which the Chamber would wish to be able to obtain from you, or from another

1 member of your team. Are you able to bring these to us, provide them to us? There
2 were six questions, which I will allow you to sum up in any way you wish when you
3 answer.

4 MR HOOPER: Your Honours, and Mr President, good morning. Thank you for your
5 questions. Can I turn to question 1 and go through them obviously in a consecutive
6 order, which refers of course to paragraph -- our paragraph in our closing brief 551, and
7 refers to a passage there, and then steps down two passages to paragraph 553, and poses
8 the question whether there is a conflict between the statements there and effectively to
9 what extent such a conflict affects our submission or reflects, indeed, the Defence case.

10 So can I turn in fact to our paragraph 553, where what I would call the "mischief" exists,
11 and is a mischief looking at it, because it conflates two things; it conflates helicopter
12 attacks by Ugandans, together with some words of paragraph 42 of the report. If we
13 look at the paragraph 42 of the report, helicopter attacks do not refer there -- are not
14 referred to there, in paragraph 42, albeit that we've heard about them in the course of the
15 case.

16 Secondly, the words as they appear in paragraph 42 of that report state, "From 9 February
17 to 24 April UPDF based in Gety ...", and it then goes -- it goes on and quotes those figures
18 that come at the end of the passage, and in quoting that it was the figures really and thrust
19 and connection of that with the Ugandans that led us to include it.

20 In those figures, even if exaggerated, even if they are exaggerated, they still indicate on
21 any view, even on a reduced view, a high level of attack, we say, on the part of the
22 Ugandans.

23 But we should -- and I'm grateful for the question, because it gives me the opportunity to
24 correct and to make clear our position, and that is that we do not accept, and nor does the
25 evidence reflect, that the UPDF operated in Walendu-Bindi at any time with Hema, and I

1 use the word "Hema."

2 All the pre-August 2002 attacks were solely Ugandan. And indeed looking at this report,
3 in another paragraph associated with paragraph 42, it refers to Ugandans coming even
4 directly from Uganda, not even from the base in Bunia. And the problem I suppose in
5 respect of that report is that, as indeed we've submitted in our brief, such reports, even
6 those emanating from the United Nations, have problems as to reliability of detail. There
7 are clear errors elsewhere in this report that we can recognise from our knowledge of
8 evidence.

9 In fact, there's absolutely no evidence of Hema and Ngiti clashes in Walendu-Bindi prior
10 to August and there's no evidence of any Hema militia. The only group referred to, I
11 mean, and in terms of this report, South Hema militia, we've never heard of such a form
12 of militia. The only militia that we've heard of, or organisation to which that name could
13 be loosely attached, because it was in fact a very formal force, was of course the armed
14 wing of the UPC, which we in this case are generally called UPC.

15 And there's a report, interestingly, specifically refers to UPC when it intends to and it was
16 quite intentional. It's referencing to UPC, and there's no mention of UPC in the context
17 of this little aspect. So we say there's no substance to any suggestion of a Hema and
18 Ngiti problem prior to August, which goes back to our original paragraph.

19 And returning to that paragraph, 551, and its overarching I suppose submission that there
20 is a danger to over-emphasising the ethnic problem, that's not to deny that there were not
21 elements of ethnicity operating, but we must be careful not to over-emphasise it and it's in
22 the interests of the accused that that view is taken.

23 In fact, if you look at this report generally, it actually supports the view, and assertions or
24 submissions I should say, of the Defence, because it demonstrates -- you can go from
25 paragraph 4, I can name the paragraph, but there's not very many, between 4 and 42, and

1 it demonstrates how the violence started in the north and slowly extended south and the
2 problem in the north, we are told, was a land problem between Lendu and Gegere.
3 We've had little, no assistance in this case, as you know, and the Lendu and Gegeres, as
4 we know, speak the same language and live north of Bunia in a general sense.
5 Paragraph 15 speaks of how the problems and the violence that it resulted in flowed south,
6 and eventually the tide, as it were, reached Walendu-Pitsi, it refers to, and Walendu-Djatsi,
7 and it says, quote, "In the poorer and rural areas ..." and that's in these particular areas of
8 Pitsi and Djatsi, quote, "In the poorer and rural areas, both Hema and Lendu generally
9 coexisted and intermarriage was common." That's paragraph 15.
10 And Walendu-Tatsi, so the tide advancing slowly, coming south and now just east, east of
11 Bunia itself, where Bedu-Ezekere and the rest are, Walendu-Tatsi, and it says there,
12 "Where Lendu and Hema communities were living in peace only to become involved in
13 late 2001." So we do have a very gradual tide coming down.
14 Now, the Hema south speak Hema and the Ngiti speak Ndruna. They speak separate
15 languages and distinct languages to the Gegere, or the Lendu, and between them there's
16 no evidence of any problem. The only evidence of problem we've heard is between Bira
17 and Ngiti.
18 So that's our observations, and again we've never heard of Hema south militia and there is
19 no evidence of that and we say that there was no Hema militia activity in Walendu-Bindi.
20 We've heard not any evidence of it.
21 No history of ethnic problems there and Germain Katanga, for his part, said he didn't
22 know or hear of any joint UPC/UPDF alliance in early 2001 or early 2002 and asserts, as
23 other witnesses have, that the first UPC attack on this area was post the fall of Lompondo,
24 and that's found and generally in his transcript 320, page 21 and thereabouts.
25 And the significance of all that, and the general thrust of our do not - do

1 not - over-emphasise the ethnic nature of this, is that this is not a race hate case. This is
2 not Tutsi and Hutu. This is not Serb radical against Muslim Kosovans, or Bosnian
3 Muslims, or Serb radicals and Croats. It's not one of those cases where the old ghosts
4 come out: The prejudices, the race hate. This is not one of those cases.
5 And the Prosecution have -- I'm not going to use the word "misled," because they become
6 ill-informed because of a lack of proper investigation. They've exaggerated this position,
7 and it's important to bear in mind, in our submission, before these events there was no
8 race hate between the Ngiti and other tribes, there was no race hate between the Ngiti and
9 particularly the Hema and there isn't afterwards. These are a people living in peace
10 again. What happened in 2003 was a political and military manipulation of a peasantry.
11 Those are my submissions in relation to your first question, which has and will have taken
12 the most time, I think, to answer.
13 The second question relates to Mbadu and his position. In a nutshell - and I think I can
14 deal with it in that way - Mbadu is a local and he was not APC. And I'll come back to
15 any aspects of that that the Chamber may have by way of supplementary questions, but I
16 think that answers that question and that is the position of Germain Katanga, dare I say,
17 and I hope that in fact I am reflecting his instructions in respect to these matters.
18 The third question deals with Yuda and his status, and again I can deal with that subject
19 again to any supplementary questions the Chamber may have I hope fairly briefly, and
20 that is that it's our case that Yuda was APC trained. He had been a member of the APC
21 and as part of his training -- well, and as part of that he'd received training. So he wasn't
22 trained, as it were, as a combatant who was trained by the APC. He was an APC soldier.
23 At the time that we're concerned with, late 2002, February 2003, he was no longer APC.
24 He had like others gone, if I can use the word, "freelance," but unlike the others he had a
25 direct contact and link with the APC at Beni and doubtless with colleagues within the

1 APC and to some extent - and we don't know the extent - he may very well have seen an
2 affiliation and perhaps even an aspiration towards the APC, but he had a phonie, you
3 may recall, he was getting direct messages from Beni and you may recall Katanga talking
4 about how he, Yuda, had actually -- appears to have been directed from Beni, one infers,
5 because he's turned up at the piste to sort out the problem of the terrain so that the
6 Antonov with the arms can land on that first trip back with Chef Manu from Beni. You
7 may recall they arrived, they can't land, they go back, they come the next day and Yuda's
8 sorted out the terrain and it was strengthened up, and so he was able to by-pass Germain
9 Katanga if he wanted to. He had his direct links.

10 The fourth question --

11 PRESIDING JUDGE COTTE: (Interpretation) So I'm just interrupting you for a
12 moment, Counsel Hooper. The answer to question 2 is very short, but it's clear. We've
13 understood that.

14 Now, the answer to question 3 is also clear. You've detailed that.

15 That just takes me to say, you used the word "freelance," which says a lot in the present
16 case here. Do you think -- and here you can reflect on this before answering this
17 question, but do you think that we can consider that the Garimbaya, the commander, he
18 was also a freelance? Whether Commander Garimbaya was also a freelance, can we say
19 that?

20 You've made a distinction. You said Yuda was an APC soldier, he had been trained by
21 the APC, so -- and he was a member of the APC, but for the period which we are dealing
22 with he was no longer that. He was a freelancer at the time, whilst unlike others he did
23 keep a direct link with Beni and the APC and perhaps with former colleagues. Could we
24 consider that Garimbaya was also -- could he also be called a freelance, Commander
25 Garimbaya?

1 If you wish, please reflect and answer the other questions if you like. Obviously, you can
2 do that. If you want to answer straightaway, please do so straightaway.

3 MR HOOPER: My understanding of our position is that Garimbaya, certainly at the
4 relevant time up until February of 2003, perceived himself as an APC soldier, taking in
5 other words such orders as came his way from the APC.

6 Now, that position may very well not have continued, because again, looking at the
7 context, from 2003 the APC is demobilising, and so APC soldiers had -- had that situation,
8 and so from 2003 onwards and the pacification starting, particularly by the mid-part of
9 that year, one's impression - and I can only put it like that - is of perhaps individuals being
10 more concerned about their own personal interests in advancement in demobilisation
11 packages and the like.

12 And we don't know and I can't say, there's no evidence, whether there was a difference at
13 that time between being an APC demobilised soldier and perhaps being a militia. I don't
14 know which, if any, was -- held out the bigger carrot, as it were, or whether they were
15 being treated the same. That is not clear, but -- and you may recall that we sought
16 records relating to demobilisation and approached the Congolese government in respect
17 to that and CONADER, and the rest of it, and we weren't able in fact to have entrée into
18 that sort of material. It was regarded as privileged because it dealt with individuals.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Counsel Hooper.
20 Please go on to question 4 now.

21 MR HOOPER: Yes, question 4, an interesting question, and again I speak -- these aren't
22 my personal views. These are my understanding of the reflection of both evidence and
23 Germain Katanga's position in particular in respect of the evidence here.
24 So the Chamber essentially has posed the question under which of three particular
25 categories do these various players that we've heard about fall, and the first category is

1 those who came under or pertain to the APC. And the list, as it were, I present is - and I
2 hope the booth can follow my names - the first one is Garimbaya. The second is the man
3 known as Alpha Bebe, A-L-P-H-A B-E-B-E, who was at Aveba and then went to Bukiringi.
4 Then we have Mbale, M-B-A-L-E, also known as Kambale; Kute, K-U-T-E; Move,
5 M-O-V-E; and Captain Mutombo Demouton, who was at Gety, or Gety État, as we heard;
6 and of course there were the obvious APC identified figures, Blaise Koka, Mike 4,
7 Kasereka, but they're in a different category, I suspect, than the names that your Honour
8 was concerned with.

9 The second category was a question as to identifying those who were only local
10 combatants, and the list I present is Mbadu, M-B-A-D-U -- just pausing there, as
11 Mr Katanga regularly reminds me, not to be confused with Mbale, who of course was
12 under the first list.

13 So, Mbadu. He was a local. Enemi, E-N-E-M-I. He was a local. He had been trained
14 at Nyaliki. Cobra Matata. He had been APC, trained at Nyaliki, but at that time had
15 no -- had severed all relationship with the APC. Kisoro. Again, ex-APC and as APC
16 had been trained at Nyaliki, but completely severed and as we've heard a complete wild
17 card. Oudo Mbafele, that's O-U-D-O M-B-A-F-E-LE, who was at Bavi Olongba,
18 O-L-O-N-G-B-A, and Camp Jerusalem. Angulumu, A-N-G-U-L-U-M-A, who was we say
19 at Similiki, S-I-M-I-L-I-K-I, at the end of 2003.

20 Safari Ndekote, N-D-E-K-O-T-E, and we understand was at Songolo, had been Nyaliki
21 trained. Kandro, of course, he's a figure, but he's dead in September, he was
22 ex-FAZ - Forces Armées Zaire - and also ex-APC. And Germain Katanga, local, had
23 relations with the APC, but not Nyaliki trained.

24 And the third category was who of those being local combatants had a direct relationship
25 with the APC; and aside from those very specific obviously people mentioned earlier,

1 particularly the ones who arrived just a few weeks before 24 February, who then by
2 inference become the management line, as it were, of the APC soldiers in the area and for
3 which we say was part - and a large part - of their purpose for being there, those who had
4 a direct relationship with the APC was otherwise Yuda. He of course had a subordinate,
5 Dark, but Dark was a gendarme, an ex-gendarme, from I believe Nyankunde. From
6 Bunia, sorry.

7 So those are our understanding of the relationship in respect of question 4.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much for giving us that
9 break-down, in keeping with our request; namely our question 4.

10 Regarding the first category, people that only came under the APC, you gave several
11 names and you gave their family names but I think there's one name for which you also
12 mentioned the rank, Captain Mutombo. Captain Mutombo. Do you think you could
13 tell us whether the rank of this captain, was that an APC rank similar to the rank of Blaise
14 Koka or was this a rank that he had attributed to himself? Could you tell us that? If
15 you can't answer right off the bat, that's just fine, but please try.

16 MR HOOPER: Yes, my own recollection is confirmed, so he -- his grade was a military
17 grade and he'd started off, you may recall, in Aveba, with the peloton, an APC platoon,
18 and as I recall the evidence he moves to Gety but not with his platoon. That stays in
19 Aveba and is taken over by another person, another APC, Mbale.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. If we could
21 now move on to question 5, which has to do with the heavy weaponry. This is
22 something that we've already looked at with the OTP, but now if we tackle this from a
23 different angle.

24 MR HOOPER: I -- first of all, yes. Let's deal perhaps with the APC, which essentially
25 we are doing, and its training. We haven't had any good evidence on that, and nor has

1 the Prosecution produced any.

2 But as with any army, basic training does not extend, in our submission, necessarily or at
3 all to specialist or more specialist weapons. Heavy mortars, for example, are specialist
4 weapon, it would appear. So if you are trained, if you undergo a basic training, it doesn't
5 follow that you are trained in specialist weaponry.

6 Now, there had been first of all local people who'd been trained for the APC, as we've
7 heard at Nyaliki, in order as part of their training as APC soldiers and some, as we've
8 heard, effectively left the APC and became free agents, if I can put it like that, living
9 within Walendu-Bindi and others, as we've heard, retained an APC status and their
10 training. In relation to the former category, we don't know how many and to what
11 extent they'd been trained.

12 Now, the list I provided in respect to the last question, I can say this, because I'm not in a
13 position really of being able to give evidence, but I can indicate the Defence position, and
14 that is that amongst those, including those who had APC training, as it were particularly,
15 and only those, there were some there who were first category soldiers, who had use of
16 light weapons and training in light weapons. Some with training in RPG, but not
17 mortars. Mortars appears to be the defining line, and there were some who had training
18 in mortars, and there were a very few who had training in heavy mortars. So it was a
19 rare skill, if I can put it like that.

20 So there were APC trained men among the combatants. We don't have evidence as to
21 how many or how extensive training there were, but I've indicated I hope fairly what our
22 position is and our understanding is. Of course, if you have those skills, addressing your
23 question, then you are of course in a position to pass those skills on.

24 But on the other hand we probably have in the context of the facts of this case as we know
25 them, in that lead-up to 24 February and to the -- from December after all to February

1 we're talking seven weeks, we're talking a very pretty tight window of opportunity there
2 for training, so we're submitting that the opportunity for training was limited by the
3 time-frame; and of course it's not just with these things, knowing where to put what and
4 what trigger to pull, and the rest of it, it's the tactics that go with it.

5 Now, as for militia training at Aveba, it was almost non-existent. Germain Katanga said
6 there was none. And the only training we've heard seems to have come, to my
7 recollection, largely from some Prosecution witnesses, but with little detail. And
8 standing on my feet this morning, I cannot bring to mind any details of training at Aveba,
9 other than parades and running.

10 And we've heard generally of some disassembling of automatic weapons and putting it
11 together again. We heard about that in the context of this alleged training in
12 Bedu-Ezekere from, as you know, dubious witnesses but it's all very limited. So we've
13 never heard of anything sophisticated.

14 And finally on this point, one would submit this: That even if you have the skills, if
15 you're in the APC on Kinshasa, are you going to hand over heavy weaponry to local
16 combatants? I've no recollection of seeing any heavy weaponry, for example, on the list
17 of weapons handed in during the demobilisation process. They don't seem to have had
18 them, whether there were some there with skills or not, and so we submit it's probable
19 that the weapons that were delivered, that included heavy weapons, were destined not for
20 the combatants but for the APC themselves, the ones that the APC still saw, as it were, on
21 their list, were their men and hadn't departed.

22 That would seem to make sense, and there would be very compelling sense not to arm
23 with that kind of weapon people who could turn and bite the hand that feeds. So that's
24 our response in respect of that question.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. I beg your

1 pardon? Yes, I'll just take this opportunity to thank Mr Hooper for the information that
2 he's given us.

3 Now, when we asked that question we had the feeling that it might be difficult to
4 reconcile two paragraphs, namely 697 and 1173.

5 Now, according to the Katanga Defence, the use of heavy weaponry did basically -- or for
6 the -- really was ensured by former members of the APC. Now, I think this is the right
7 moment for me, and I wanted to be very clear on this point, we're not asking the Defence
8 to provide evidence at this point. That is not the purpose at this stage. We are actually
9 asking for clarifications of issues, and this really only relates to the Defence teams, but this
10 will help us with the broader range of information that we need when the time comes for
11 the Chamber to make a final determination.

12 So, now, in this particular case, there certainly must have been basic training in the use of
13 heavy weaponry, but it may not be in the interest of an ally to train local combatants too
14 well, but the use of heavy weaponry, and this is the argument that we found in paragraph
15 698, and apparently this was basically handled by former APC members.

16 So if we could just glance at the transcript, to be clear about what Mr Hooper has told us,
17 and I hope I haven't twisted it around. In any event, the transcript is authoritative.

18 Now, this was one of the questions that we really wanted to ask you, we wanted that
19 clarification, because since last Tuesday we've been hearing quite a bit of information,
20 very dense information, and we did want to know about the co-ordination role that
21 Mr Katanga played. Mr Hooper, if you could respond.

22 MR HOOPER: Yes, certainly. Just before I step to that, can I just remind you just of
23 Germain Katanga's own statement in relation to the heavy weapons at T-317, page 52?

24 This was just in terms of the combatants, where he said, "Well, yes, perhaps they'd given
25 82 millimetres ...", this is a mortar, "... to a combatant for example to help them to ...," and

1 he said, "... pound some cassava leaves, but not to use as weapons. They didn't know.
2 They didn't know how to use them," and as I say, as far as the APC were concerned, some
3 very few had training, but most in our submission did not in heavy weaponry. That's
4 our position.

5 Coming to question 6 and the manifesto, and you refer there to our closing brief,
6 paragraph 593, which refers to, if I can just turn it up -- and 593 was dealing with the
7 manifesto, EVD-D02-0063. And in that paragraph, and of course it's merely a very -- well,
8 yes, particular extracts are taken from the manifesto document itself, so we'd obviously
9 emphasise looking at the original again.

10 But the manifesto particular aspect of it, which is at the bottom of column 5, dealing with
11 some aspects of structure, referred to the need to create (Interpretation) strategic
12 co-ordination positions.

13 (Speaks English) Now, you all know about my French, but I understand the phrase
14 (speaks French) is in the nature of a metaphor, or simile, that's my understanding, so I
15 proceeded on that basis.

16 So Germain Katanga, he considered his position to be a co-ordinator, or shall we say like a
17 co-ordinator. I think it would be fairer to express it as a co-ordinator, or like a
18 co-ordinator. It's not clear whether on the evidence, and revisiting it again yesterday it's
19 certainly not clear whether that was a function he'd been awarded, or the way he
20 interpreted his liaison function, and that he -- and it appears, in our submission, to be
21 really very much the latter, and that it's Germain Katanga who has reached out and
22 adopted the word "co-ordinator" to help describe his liaison function, as he saw himself to
23 be when he stepped off the plane having come back from Beni.

24 As far as the word is concerned, where would he have got it? Well, certainly he wasn't
25 the first to use the word, and you may recall Floribert Ndjabu in his early discussions in

1 Beni, this is before Adirodu arrives, the discussions amongst the self-help refugees where
2 he was elected co-ordinator of the discussions. That's even before any mention is made
3 of any organisation, and then we know as it develops, and I refer to our paragraph 585
4 where there are references, that he becomes, to Adirodu's annoyance, elected co-ordinator
5 within the FRPI, with Sambidhu, S-A-M-B-I-D-H-U, who is Adirodu's younger brother,
6 being named as his deputy.

7 And that's, as it were, the only stated position that we've heard. This FRPI is a boneless
8 structure. That was the word that was used. Pichou mentions it as well. And

9 later - and it's not very long later - Ndjabu, as we know, completely drops out within a
10 matter of weeks, if not days, to take over the far more attractive position of president of
11 the newly created FNI, and it's early December when that's first floated in Kpandroma.

12 It's all very confusing, not least of all because we have the manifest document of January
13 where it's quite clear on the face of it that it's -- the FRPI is meant to be an all embracing
14 organisation for the north, right up to Kpandroma, and incidentally it's never been
15 suggested Germain Katanga was president of an organisation that stretched there.

16 So -- and we can see the word is employed also in the manifest, and it cannot in my
17 submission be a sheer coincidence that the word appears in the manifest and is the word
18 reached for by Germain Katanga. It clearly may very well have influenced his idea of his
19 position and of what to call it.

20 Now, your question goes on to ask about the use of the word "echelon" and what exactly
21 really was Katanga's level and position relative to others? It's very difficult, because we
22 would say as -- that this concept of the FRPI was from the very beginning a totally
23 overblown idea that nobody ever seems to have quite grasped.

24 And you look at the manifest, which contains it's constitution, and clearly expresses an
25 intention to have this Conseil des sages, a military structure, that talks of a military

1 structure nevertheless which is (speaks French), whatever that means. I am being
2 congratulated by Professor Fofé for managing to express that French, but what does that
3 mean? And right through that document you can see the avaricious hand of Mr Adirodu,
4 who really, really seems to want to keep control and power and opportunity very much
5 for himself, and we all know what he was like when he turned up steaming in Uganda, in
6 Kampala, in the early days, or rather in the early days of March 2003.

7 And this overblown structure seems to have become quite orphaned. The FRPI seems to
8 have become an orphan really, as far as he and others are concerned - Adirodu and others
9 are concerned - and is left really rather washed up, and then picked up particularly after
10 the fall of Beni again -- Bunia again to the UPC in May. It seems then to have been
11 picked up, dusted down, by the combatants of Walendu-Bindi, and particularly Germain
12 Katanga and those around him, in order to give them a credibility that would go down in
13 Kinshasa and at the pacification meetings and with MONUC and the rest of it. It's
14 polished up.

15 So I say all that because the FRPI and it's ideas never really took off, and because of that
16 it's difficult to understand never structured, and so when we are looking at echelon and
17 the aspirations of it, it's really very difficult to deal with. It's a -- it certainly was never
18 the position that the Prosecution saw it as. It was never the structure that it's been
19 claimed to be and the position it's meant to have played in this case.

20 At the time that he goes back, i.e. Germain goes back to Aveba, using the word he said
21 "liaison" and he describes that and it's set out in the closing brief how he saw his function
22 vis-à-vis local combatants, vis-à-vis the others, but at no time does it really have a sense of
23 structuring.

24 He says that there remained Sambidhu, who was seen as co-ordinator in -- left in Beni,
25 and that's the only other person who I can think of who is ever said to have been ascribed

1 the kind of post that's mentioned in the manifest itself.

2 So I hope that goes some way to answering that question.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. The Chamber
4 wishes to thank you for those replies. I think we're a little bit over time, but I'm partly to
5 blame. I interrupted you twice.

6 Now, Mr Kilenda, if you could provide some clarification on two points, please go ahead.

7 MR KILENDA: (Interpretation) There'll be two of us speaking.

8 THE INTERPRETER: Overlapping speakers.

9 PRESIDING JUDGE COTTE: (Interpretation) We have allocated about 20 minutes, so if
10 you could try to respect that time-line we would appreciate it for this morning. Please
11 proceed.

12 MR FOFÉ: (Interpretation) Good morning, your Honour. Good morning, your
13 Honours. Thank you for allowing me to address the Court.

14 I will endeavour to answer your first question. I won't repeat the question, so as to save
15 some time.

16 Your Honours, we argue that the armed conflict in Ituri, within the context of which the
17 attack on Bogoro occurred on 24 February 2003, was an international armed conflict
18 because the two terms in your question, subsection (a) of your question, were to be found
19 within the conflict itself. I don't want us to veer off into some sort of theoretical debate,
20 but we shall show, or demonstrate, this to you by way of evidence that is on the record.
21 We are not going to advance a number of theories. We are going to restrict ourselves to
22 practical matters.

23 Now, the evidence on the record shows that the UPDF, the UPDF, the Ugandan army,
24 took part directly in the hostilities. The UPDF did not just fight the APC but also they
25 fought Rwanda, with the UPC being the intermediate, so to speak.

1 In actual fact, initially, Uganda had supported the UPC rebellion against the RCD, initially.
2 The UPDF, the Ugandan army, and the UPC conducted military operations together. In
3 particular, specifically, your Honours, the Bunia war that drove out Lompondo and the
4 APC from the town of Bunia on 9 August 2002.
5 Then at some point the UPC and Uganda split up, and UPC signed an alliance with the
6 RCD-Goma with the support of Rwanda. Prosecution witnesses P-30 -- rather, the
7 Prosecution Witness P-30 provides the historical background to this conflict and clearly
8 pointed out how events accelerated from January 2003. P-30 testified about Thomas
9 Lubanga's speech at the Bunia stadium on 11 January 2003. There is a video excerpt
10 EVD-D03-00042. In that speech Thomas Lubanga talks to the people following his visit
11 to Goma and the signing of the alliance with the RCD-Goma.
12 On 23 January 2003, there was a UPC meeting with Salim Saleh, the Ugandan general,
13 who was the junior brother of Yoweri Museveni, the President of Uganda. Video
14 excerpt EVD-D03-00037, to 00040, several video excerpts to demonstrate this point.
15 UPC asked General Salim Saleh to send out the UPDF troops from the Ituri in a public
16 statement at the Zanga Cinema Hall in the presence of the people of the Ituri. Then there
17 was a press conference in Kampala on 11 February 2003 by Thomas Lubanga following
18 his meeting in Dar es Salaam with the President of Uganda, Yoweri Museveni, and Joseph
19 Kabila, the President of the Congo. EVD-D03-00027 to 00031, several video excerpts to
20 demonstrate this point.
21 Thomas Lubanga called for the withdrawal of the Ugandan army from the Ituri. That
22 was a public statement of the break-up, the total break-up between the UPC and Uganda.
23 Mr President, your Honours, what then was the reaction of Uganda? In January 2003,
24 following that public humiliation of the Ugandan General Salim Saleh, Uganda sent
25 General Kale Kayihura to take over the UPDF armed forces in Bunia in the Ituri.

1 Rwanda, on its part, consolidated its presence in Ituri. P-12, another Prosecution witness,
2 provides information to that effect and evidence actually to that effect; namely, that
3 Rwanda was providing weapons, heavy weaponry to the UPC.
4 Chief Kahwa. Chief Kahwa created the Mandro camp and an Antonov craft dropped
5 weapons and ammunition in Mandro, such weapons and ammunition being supplied or
6 provided by Rwanda. Rwanda also provided training for the UPC soldiers. Trainers
7 from the Rwandan army came to Mandro. They came to Mandro for that purpose.
8 Rwanda also provided to the Kaligonza camp 60 and 81 millimetre mortars, ordinary
9 assault weapons, AK-47 rocket launchers, RPG7, anti-personnel mines and anti-tank
10 mines as well as machine-guns. All this information was provided by P-12, Mr President,
11 your Honours. This information was provided to the Court by Witness P-12, and we can
12 provide the relevant references in the transcript as well as find this material in our final
13 written submissions.
14 Young UPC persons went to Rwanda to be trained in the use and handling of heavy
15 weaponry. It is Bosco Ntaganda who was the commander of all that related to the use of
16 that heavy weaponry, alongside another specialist, 61 Sierra, from Rwanda. It would
17 appear that some Rwandese-speaking person in Tchomia during the UPC and PUSIC
18 war -- and may it be said that the UPC was led by Thomas Lubanga, a Hema, and PUSIC
19 was also headed by Chef Kahwa, who was a Hema. So we are no longer looking at an
20 interethnic conflict here, Mr President.
21 Ntaganda decided on the use of heavy weaponry regarding military operations that were
22 in the interests of Rwanda, taking place in gold-rich areas, such as Mongbwalu and
23 Mabanga. So these are strategic, economic interests at stake here, Mr President, your
24 Honours. Kigali was giving at the time direct orders to the UPC.
25 Mr President, your Honours, you may want to recall the following pieces of evidence,

1 EVD-D03-00064, on the chain of command within the UPC. This evidentiary material
2 was provided by P-12. That document establishes that the authorities in Kigali gave
3 direct instructions to Ntaganda or to Thomas Lubanga himself or, furthermore, to the
4 intelligence -- to the military intelligence services which were headed up by one Rafiki,
5 who spoke Rwandese.

6 As an example, and going by P-12's testimony, it is Kigali that ordered Thomas Lubanga
7 to attack the UPDF forces in Dele on 6 March 2003. Akobi had learnt that the attack of
8 the UPDF had been announced by the UPC and he got that information from Lubanga
9 himself, who did not understand why the UPDF had to be attacked.

10 Thomas Lubanga himself did not understand the purpose of that attack, but in any event
11 he had to attack because he had been told to attack and he had to comply.

12 According to Kisémbó -- Kisémbó, who was the Chief of Staff of the UPC, that is the
13 symbolic Chief of Staff of the UPC, because the true Chief of Staff was Ntaganda, because
14 Kisémbó was his bodyguard, but Kigali arranged it in such a way that Ntaganda was not
15 in the forefront. Kisémbó was there as a figurehead but the real Chief of Staff was
16 Ntaganda, and you can see that in P-12's testimony. So Kisémbó said that Kigali had
17 instructed them to hold fast, and that if they succeeded they would receive reinforcements,
18 and I quote, "We will expel the Ugandans from the territory."

19 So, Mr President, your Honours, as you can see, two foreign states fought each other in
20 Bunia and in Dele on 6 March 2003; namely, Uganda and Rwanda. Uganda's operations
21 were in the public eye through its visible army, the UPDF, which was present in the Ituri,
22 which occupied the Ituri and which was in charge in the Ituri; whereas Rwanda, on the
23 other hand, conducted clandestine operations through the UPC. Rather curiously, the
24 Prosecutor does not draw any conclusions from these facts and rather argues that it was
25 an interethnic conflict. Mr President, that is incorrect; that is false.

1 Furthermore, and still relating to the war of 6 March 2003, when the UPDF - that is the
2 armed, the Ugandan army - booted out the UPC from Bunia. Then Thomas Lubanga,
3 Bosco Ntaganda and the Ugandan rebels - I repeat, the Ugandan rebels - including
4 Colonel Muzora, who at the time was with them, they went to Bule and at that time
5 Rwanda sent an aircraft to take them out to Kigali.
6 While in Kigali they suffered as if they had been in jail, and I'm referring here to P-12's
7 testimony, and they were subjected to that suffering because they had failed to drive out
8 Uganda from the Ituri.
9 The question then, Mr President, your Honours, must be the following -- or we submit
10 that Uganda reacted on 6 March to the fall of Bogoro on 24 February 2003. That was a
11 reaction. The reaction also came from Rwanda.
12 P-12 talked about the involvement of Ugandans in the Bogoro attack, when he mentioned
13 the strategic interests that Uganda had in dislodging the UPC from Bogoro.
14 Let me quote a little excerpt from P-12. According to P-12, Ugandans had considered
15 how to get rid of the UPC and to replace it, and then this is what P-12 said, I quote: "The
16 only option for them was to have free access through Bogoro whereby they could easily
17 move all what they had from Lake Albert to Bunia in order to assist their troops. That is
18 why it was in their interest to get rid of Lubanga from Bogoro." And when he said
19 "they," he's referring to Ugandans. And who's speaking in this case? It is P-12.
20 Now, P-317 also testified that "... several victims in Bogoro had stated that the attackers
21 were wearing military uniforms and other APC uniforms, other APC uniforms or UPDF
22 uniforms, and that they spoke Ugandan Swahili," end of quote. These are some of the
23 pieces of evidence that point to the involvement of foreign forces in this conflict.
24 Do I have a few more minutes, Mr President?
25 PRESIDING JUDGE COTTE: (Interpretation) Yes. We have listened to you carefully.

1 We note that what you said is contained in your final brief and, please, we are not
2 re-opening final arguments; we are simply seeking specific, clear clarifications on these
3 specific points and, please, do conclude quickly so that Mr Kilenda can also have his say
4 and Mr MacDonald would also speak at 10.30. You have -- we had set aside 20 minutes
5 for all of this.

6 MR FOFÉ: (Interpretation) In summary, this is what I can say: There were foreign
7 forces at war, and there is evidence to point to the fact that Pre-Trial Chamber I was right
8 in determining that this was an international conflict because of the presence of
9 international forces or foreign forces.

10 In your second question, you wanted to know whether the armed groups in the Ituri were
11 controlled by those foreign forces, those foreign states, and the answer, your President, is,
12 yes, yes.

13 Rwanda had control over the UPC and issued orders to the UPC. Uganda took the
14 initiative to create the FRPI with Ndjabu, Chef Kahwa and who have you. Let me also
15 add that Dr Adirodu came to Beni with the FRPI. Adirodu said at the time that the FRPI
16 was an institution that the General Staff of the Congolese army was familiar with, so that
17 is Ndjabu's testimony, that the FRPI was known to the headquarters of the Congolese
18 army, and Adirodu was acting within the context of the EMOI. Therefore, the Congolese
19 government had control over the FRPI under Dr Adirodu, over the EMOI and over the
20 RCD-K/ML.

21 Let me also point out, in support of our position relating to those choices, namely, that
22 this was an international armed conflict, Mr President, you may want to remember the
23 various frameworks for negotiations to end this conflict. They were all of an
24 international nature.

25 One, the case of Rwanda, EVD-D03-00066. The government of Uganda, Congo, went to

1 Angola and under the auspices of Angola tried to seek a solution to the conflict. That is
2 an international context.

3 Second context: Dar es Salaam. Presence of the Head of States of Uganda, Tanzania,
4 Congo and a delegation from the Ministry of Foreign Affairs from Angola, and the
5 presence of Thomas Lubanga and FIPI. All of those together in Dar es Salaam,
6 Mr President.

7 So these are two pieces of negotiations which took place and were of an international
8 nature pointing to the fact that this was an international conflict, going by the presence of
9 international stakeholders.

10 Thank you, Mr President. I will stop there, although I still have more that I could have
11 offered to the Court. Thank you, Mr President. Thank you, your Honours.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé. Maître
13 Kilenda, you have much less time to provide answers to question 2, question 2 which is
14 much more of a factual question relating to the exact status of Mathieu Ngudjolo.

15 MR KILENDA: (Interpretation) Thank you, Mr President, thank you, your Honours.
16 This is the answer to your question. No, according to Mathieu Ngudjolo's Defence it is
17 not possible that he was consulted by the Ugandans authorities on the movement by
18 Witness 317 for two reasons: One, Mathieu Ngudjolo was not the one who made
19 decisions in the Ituri. You may remember that the territory was occupied by another
20 power and, Mr President, you have the Prosecutor's EVD-0066, EVD-166, 167 and 168, in
21 which General Kayihura said to Mathieu Ngudjolo that, "If you have any security
22 problems please contact us."

23 Secondly, the Congolese authorities themselves, that is the authorities of the Democratic
24 Republic of the Congo, needed to have authorisation from the Ugandan government to go
25 to the Ituri. Professor Fofé has already referred to the Rwanda agreement and that

1 agreement which was facilitated by Angola contains every answer that you seek,

2 Mr President, and I thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Maître Kilenda. Now, the
4 Prosecutor, you now have an opportunity for rebuttal to these final submissions by the
5 two Defence teams. Do you think you will go into the time after the break? This will
6 help us to plan better.

7 MR MACDONALD: (Interpretation) Thank you, Mr President, your Honours. If all
8 goes well we should be done by 11.

9 PRESIDING JUDGE COTTE: (Interpretation) You then have the floor, but we hope
10 that the two accused persons will be able to take the floor at 12.30, so that they can speak
11 conveniently. So we will try to do everything to wrap up by 12.30 so that each of the
12 accused persons can have their 30 minutes. Mr MacDonald, you have the floor.

13 MR MACDONALD: (Interpretation) Thank you, Mr President. My colleague,
14 Ms Luping, will deal with two points of a legal nature raised by Mr Katanga's Defence
15 and then I will speak after her, to deal with the factual issues, following the statements by
16 the two teams. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping, you may now address
18 the Court.

19 MS LUPING: (interpretation) Thank you, Mr President. Good morning, your Honours.

20 (Speaks English) Two legal questions: Matters relating to Regulation 55 and secondly,
21 crimes against humanity, but turning first to matters relating to Regulation 55.

22 The Prosecution submits that Defence for Mr Katanga were factually inaccurate when
23 they argued that they didn't receive proper notice under Regulation 55 of the potential
24 requalification of the conflict as a non-international armed conflict because the
25 Prosecution failed to raise this issue until the end of the trial.

1 Defence argue that when the Prosecution said that the character of the conflict is
2 immaterial, that this was not proper notice, and that, and I quote, "All the documents in
3 this case rely upon the provisions relating to international armed conflict." End of quote.

4 And I refer to transcript 338, page 44.

5 However, the Prosecution recalls that originally, in fact, in the arrest warrant application,
6 the charges were based on a non-international armed conflict and in the document
7 containing the charges the charges were in the alternative to take into account the
8 international and non-international character of the conflict, and again, in the summary of
9 the confirmation decision, and I refer to footnote 9 of filing 1568, that is Annex 1, the
10 Prosecution in fact highlighted the discrepancy with Pre-Trial Chamber I's finding of an
11 international armed conflict and again recalled its own position in the document
12 containing the charges, that because it considered that it was immaterial how the conflict
13 is characterised, that it was charging both accused in the alternative, and I quote, "Based
14 on counts reflecting the same conduct but related to war crimes in the contexts of a
15 conflict of international character and of non-international character."

16 Katanga Defence also argue that they would be prejudiced by a requalification of the
17 conflict as a finding of a non-international armed conflict would somehow reduce the
18 evidentiary threshold that the Prosecution needs to prove for the specific charges, thereby
19 involving a change to the essential nature of the charge in fact requiring an amendment to
20 the charges. I refer to transcript 338, pages 43 to 44, and pages 73 to 75.

21 The Prosecution submits that this is legally incorrect and that in fact the Defence would
22 not suffer any such prejudice as in this case there is no such reduction to the evidentiary
23 threshold that the Prosecution must prove.

24 The essential elements of the crimes that the Prosecution has to prove are the same,
25 irrespective of the characterisation of the conflict. Defence first refer to the so-called

1 difference in the elements of the crime of wilful killing, in international armed conflicts, in
2 contrast to that for the crime of murder in non-international armed conflicts.

3 In particular, referring to the requirement in an international armed conflict of the need to
4 prove the protected person's status of the victim.

5 However, the Prosecution submits there is no difference with the elements for murder
6 that the Prosecution must prove in a non-international armed conflict, as the Prosecution
7 must still prove that the victims were protected in the sense that they had a civilian status
8 and were not taking any active part in hostilities.

9 The Defence mentions the requirement in an international armed conflict for wilful
10 killings to prove that the victim was a member of an adverse party, and similarly, for the
11 crimes of property destruction and pillaging, that the protected property belonged to a
12 member of the hostile party to the conflict.

13 However, we submit that this is irrelevant, as irrespective of the characterisation of the
14 conflict, the Prosecution's case has been, from the outset, that the civilian victims were
15 indeed targeted, as the Hema enemy, so were members of an adverse party to the conflict,
16 and their property therefore also belonged to a member of the hostile party.

17 Mr President, your Honours, moving to the second matter that I will be addressing,
18 relating to crimes against humanity. Defence for Mr Katanga argue that there was no
19 attack directed against a civilian population for the purposes of crimes against humanity,
20 as the primary object of the attack at Bogoro was the UPC and not the civilian population,
21 citing the decision of the ICTY in Kunarac that the civilian population must be the
22 primary objective, and I refer to transcript 338, pages 46 to 47.

23 However, the Prosecution wishes to bring to the Chamber's attention, a decision of the
24 Special Court of Sierra Leone, of the Appeals Chamber, in Prosecutor and Norman Fofana
25 and Kondewa, that's case number SCSL-0414A paragraphs 299 to 300 and 307 to 309 in

1 which that Appeal's Chamber reversed the Trial Chamber decision to acquit the accused
2 as the Trial Chamber found that the civilian population was not the primary object of the
3 attack but instead attacks were directed against rebels or the *juntas. The Appeal's
4 Chamber in Fofana agreed that the civilian population must be the primary rather than
5 the incidental target of the attack but they observed that the Trial Chamber appeared to
6 have misdirected itself by confusing the target of the attack with the purpose of the attack.
7 As the Appeals Chamber observed, and I quote, "When the target of an attack is the
8 civilian population the purpose of that attack is immaterial," end of quote, and I refer to
9 paragraph 300 of the decision.

10 Indeed, Mr President, your Honours, as the ICTY's Appeals Chamber in Prosecutor v
11 Tadic observed, the crimes against humanity, motives including personal motives, are not
12 relevant for determining whether a crime against humanity has been perpetrated, and I
13 refer to case number IT94-1A paragraphs 269 to 270 of that decision. Accordingly, we
14 submit that it suffices that the attack is carried out against a predominantly civilian
15 population, regardless of the motives behind the attack. Indeed, even if the attackers had
16 a military objective of fighting the UPC, civilians were still also clearly targeted, and were
17 not merely an incidental target, as all Hema were treated as the enemy, with no
18 distinction made between civilians or combatants.

19 Thank you, Mr President, your Honours. I will now give the floor to my colleague,
20 Mr MacDonald.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Luping.
22 Prosecutor.

23 MR MACDONALD: (Interpretation) Thank you very much your Honour, your
24 Honours.

25 First of all I'm going to go back to certain points raised by the Defence of Germain

1 Katanga, but to start with I'd just like to immediately go back to the answer that Counsel
2 Hooper gave to the question of the Chamber, and I will go back to a legal reasoning in the
3 Lubanga judgment on what is part of the case file, with regards to the evidence, and what
4 an EVD number is because it's important to recall that the Chamber obviously has to base
5 itself on evidence, as well as the discussions that took place with regards to the
6 admissibility of certain evidentiary items, and when something is stated, obviously that
7 has to be based on evidence, and when it's a matter of interpretation of those items of
8 evidence that has to be indicated clearly as well. So the moment to answer the questions
9 is not the time to correct or try to correct the testimony of the accused, for example, and
10 any facts which are outside the case file, as we've already mentioned, are therefore not in
11 the case file itself, and when these are not widely known, then one cannot base oneself
12 thereon.

13 Now, a legal question, with regard to the issue of child soldiers, and what constitutes
14 active participation in hostilities. First of all, I understand that in the Lubanga judgment
15 the decision develops a definition. It goes back into what "active participation" means,
16 active participation in hostilities, and we would submit that this definition is just, and that
17 the legal argumentation used by Trial Chamber I should be followed but regardless, in
18 our case file, we would submit respectfully that you haven't even asked this question with
19 regard to the scope of what active participation means in the sense of the Lubanga
20 judgment because the effect, and the theory of the Prosecution, the evidence as well, well,
21 we've always been very clear in this regard. Here, we are talking about participation in
22 the attack itself, 24 February, and participating in the commission of crimes, crimes
23 committed during this attack, such as murder, with firearms, SMGs, or machetes, so it is
24 pointless, in our case file, to ask this question, with regards to what does active
25 participation mean? Is it direct participation, or indirect in the hostilities? In military

1 activities?

2 The question is certainly interesting. It was interesting in the Lubanga case but we
3 would respectfully submit that the Defence is creating a debate where there shouldn't be
4 one because, in our case file, the Prosecution has always been clear. It is participation,
5 physical participation during the attack itself.

6 Second point that we would like to go into, with regards to the presentation of the
7 Katanga team, and here I don't want to spend a huge amount of time on this, but Counsel
8 Hooper, and we can see this in transcript 338, page 36, it goes back to this issue of the
9 chain of custody, of evidence from Medhu.

10 Now, if we could just recall, the legal argumentation of the Trial Chamber, in Lubanga,
11 the Prosecution wanted to go back to the credibility of the witness, but I think now it's
12 perhaps a good idea to quote this decision, even if this is something that has been
13 mentioned in a previous submission. I think 3274, 64, on the impact of the Lubanga
14 decision, in the present case, and if that's the case, what is this impact?

15 But if we look at the paragraph 98, the Chamber, coming back to what could be part of the
16 dossier, here I am going to quote it in English because the decision, or the copy that I have,
17 it is only in English, I don't have a translation of it yet but paragraph 98 states: (Speaks
18 English) "Article 74(2) of the Statute directs the Chamber to base its decision only on
19 evidence submitted and discussed before it at trial. In the Chamber's view the phrase
20 'discussed before it at trial,' encompasses not only the oral testimony, together with any
21 documents, and other items, such as video recordings that were discussed during the
22 hearings, but also any items of evidence that were discussed in the written submissions of
23 the parties and the participants at any stage during the trial. The key is that the evidence
24 upon which the Chamber bases its Article 74 decision must have been introduced during
25 the trial and have become part of the trial record through the assignment of an evidence

1 number." An EVD.

2 (Interpretation) So, we would submit, your Honour, that when you refer to the exhibits
3 seized in Medhu they received EVD numbers but beyond that they were commented on
4 by the parties, and succinctly I would just like to go into a bit of a history of this item 0025.
5 This item was introduced into evidence in February 2010, during the testimony of P-250,
6 and on that occasion Counsel O'Shea, in the transcript 95 and 74, he asked for
7 explanations on the subject of this chain of custody. Now, there is already information
8 which is in eCourt which can be seen, but this made it possible for the Prosecution to
9 recall this chain of custody.

10 On 25 August 2011, by email at 10.49, we once again, following a question of the Chamber,
11 we provided this -- details on the subject of this chain of custody, and once again,
12 following a question of the Chamber in 19 October 2011, page 49, transcript 325, the
13 Prosecution asked for details on the subject of this chain of custody.

14 So, and it's the Chamber itself, and on 27 October there is an answer in the transcript,
15 27 October, transcript 327, page 1 and following, and once again by email,
16 1 November 2011, the Prosecution answered and gave additional information by email,
17 which was repeated page 2 and following, transcript 330, 8 November 2011. So we
18 believe that this exhibit has been more than sufficiently debated and the Defence has had
19 more than just notification about its origin. Also with regards to the other exhibits which
20 were seized by MONUC, or the camp of Medhu, items which the Defence itself - Katanga
21 Defence - had an argument in that regard about Cobra Matata.

22 Now, if we also recall that the Defence itself based itself on items which the Prosecution
23 has not been able to cross-examine the authors thereof. So they say that they can't
24 cross-examine with regards to certain items, but that's also true with the Defence items,
25 and they base themselves on them as well in principle to support this participation, which

1 I would say is active, of the APC in the common plan.

2 Now, I would like to go into the subject as addressed by Mr Ngudjolo's team. I don't

3 think I will be able to finish before 11 o'clock, your Honour. What I would like to do is to

4 go back into the first point, because our presentation first of all is addressed to the

5 Chamber, but of course there is with -- well, we're talking here about final submissions, so

6 they also have a public nature to them. And I think that it's important, your Honour, to

7 clarify - such that it be noted - certain things the Defence referred to corruption of witness,

8 referred to the fact that we were meant to have sunk Ngudjolo, that we also went so far as

9 to threaten the Chamber to go into appeal if the accused were acquitted.

10 So we understand the importance of the final oral submissions and the importance that

11 they can have, but I think it's also important to recall, your Honour, your Honours, that

12 we are all, everyone here in this courtroom, the parties and participants, we are officers of

13 justice. We are all professionals, who are -- in respect put forward points of view which

14 are often divergent. This is the whole principle, the adversarial principle itself.

15 Now, certain arguments and certain evidence certainly can be hotly debated, but when

16 proceedings come to an end we must try not to personalise the debate, nor to occasionally

17 go overboard. Having said that, your Honour, please allow me to go back to certain

18 points, or to add some clarification.

19 Firstly, there was mention yesterday of the issue of the person, or one of the people within

20 this case, Dr Adirodu, and here I am referring to transcript 339, page 26, and I'll

21 paraphrase somewhat. So why did the Prosecution not interview, if not even as a

22 witness, Dr Adirodu in order to clarify this vagueness if not as a witness? And here we

23 are referring to the nomenclature for the FRPI, and in December and January there was

24 this delegation of Bedu-Ezekere who went to Aveba and the issue came up as to

25 the -- with regard to the seal of this letter.

1 Now, I think it's also important to state that the Prosecution did have an interview with
2 Dr Adirodu within the framework of its investigations, as is borne testimony to by the
3 evidentiary piece from January 2008, so six months before the audience -- the hearing
4 confirming the charges, and here I'm referring to my -- refer my colleagues to the item
5 DRC-OTP-0510-0051. This item is not alien to the Chamber, because this was also
6 identified on our list of evidence with regard to the cross-examination of Katanga.

7 MR HOOPER: I am only interrupting, because I've just a slight concern because I don't
8 know where my friend's going. I'm sure he's put himself carefully in harness, as it were,
9 and he won't step out of what's appropriate. We've spoken to Dr Adirodu too and he
10 said -- well, I can't say what he said, because if the Prosecution wants to --

11 MR MACDONALD: (Interpretation) Your Honour, I am pleading here.

12 PRESIDING JUDGE COTTE: (Interpretation) Please, please. Mr Hooper, thank you
13 for standing up. Thank you for having raised a cautionary note while Mr MacDonald is
14 trying to update us; the cautionary note you struck and while we are being updated in
15 this regard.

16 Now, in terms of your reply, you are making the points that you consider to be necessary
17 because, as you said, these final pleadings are public, they are perhaps followed to a
18 greater extent than a lot of other hearings, but please do not go too far because it would be
19 regrettable if we might try to catch up with something at the last minute with regards to
20 points which should perhaps have been made earlier. So there's just a caution in that
21 regard. High precision, nothing more.

22 Are we all in agreement with that? If that's the case, please continue.

23 MR MACDONALD: (Interpretation) I am totally in agreement with that and I just
24 wanted to note that the Prosecution got up on no occasion to interrupt the two accused.

25 PRESIDING JUDGE COTTE: (Interpretation) That is indeed noted.

1 MR MACDONALD: (Interpretation) Taking into account the more solemn nature of
2 final decisions, please be not be distracted by the intervention of Counsel Hooper.
3 What I was going to say is that this exhibit is not unknown to the Chamber, because it was
4 put on the list of evidence with which the Prosecution intended to cross-examine
5 Mr Katanga, which it did, and so on the date of 26 September and 10 October 2011 in an
6 email - emails - this ERN which I've just mentioned was given to the Ngudjolo team. So
7 it is incorrect, we would submit, to state that we did not have a meeting or did not
8 interview Dr Adirodu.

9 Third point: The Samba letter, EVD-D03-00136. We would just like to remind the
10 Chamber that we are -- that we deal with this item in paragraph 617 and also indirectly in
11 the next paragraph 618, but I think it's also important to state something that we've
12 already mentioned.

13 There is no evidence in the record of the involvement of a FAC battalion, Congolese
14 Armed Forces, FAC. Once again, by way of reminder the only evidence that we have of
15 the presence in a battalion, a battalion in Bogoro of the APC, is -- comes from Mr Germain
16 Katanga, and as we've already mentioned the Chamber will be able to evaluate his
17 credibility with regards to this for the whole case record.

18 Now, the fourth point, if you would allow me to go back to this issue of Witness D02-176
19 and a cross -- a leading cross-examination carried out by the Prosecution with regards to
20 the position of authority while we were in cross-examination, it's important to state here,
21 in May 2011.

22 The Prosecution -- or the Defence of Mr Ngudjolo refers to the fact that we would have
23 violated the Chamber's prescriptions and that this cross-examination was inappropriate.
24 The Prosecution, or the Defence, refers itself to an oral decision of 11 September 2011 to
25 justify, or rather base its arguments on what we would like to state here and clarify. We

1 are not talking about 11 September. There was no hearing then, so there's no transcript
2 from then, but it is a decision or was a decision during the testimony or the -- of Chef
3 Manu.

4 So at the start of the month of September there was indeed an oral decision of the
5 Chamber, but this decision followed an intervention by Mr Katanga's team stating that the
6 Prosecution should not be permitted to elicit witnesses - Defence witnesses - for Ngudjolo,
7 that it shouldn't elicit incriminating evidence against its client unless non-leading
8 questions were put, as they would be in an examination-in-chief. And this is when we
9 are talking about a common law system, you have that to take into account.

10 Now taking -- now, going back to D02-176, during the cross-examination the
11 Prosecution -- well, there was an objection on the part of the Kilenda team, and every time
12 we asked a question any kind of Defence witness on the subject of authority of Mathieu
13 Ngudjolo there was an objection from the Defence. Automatic, an automatic reflex, but
14 once this objection, which was ruled on by the Chamber and favourable to the position of
15 the Prosecution, you did allow us to ask leading questions, your Honour, at that time. So
16 at the time when the questions were put it was permitted, and the Defence itself, your
17 Honour, came back to what it considered to be a contradiction with regards to the issue of
18 leading questions by the Prosecution on the subject of the authority of Mathieu Ngudjolo,
19 and it was at this time that the witness -- on the question of Counsel Kilenda, the witness
20 stated in transcript 256 -- 257 that everybody knew that Ngudjolo was the number one in
21 Zombe, and it is the Kilenda team which itself got that clarification.

22 And here I will suspend. I have two points left to deal with, and I will need a maximum
23 of five to ten minutes in order to deal with them. Thank you very much.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor. Quite simply,
25 so that everybody is aware of this, with regards to all the points that have given rise to

1 quite lively interventions during this hearing between the Defence team and the Office of
2 the Prosecutor, the Chamber shall take the time and shall pay a lot of attention to the
3 transcripts which have been drafted on this day in order to completely remember the
4 exact conditions of the testimony of the witnesses and the position that the Chamber took
5 at the time, the reactions that there were by the Defence and the Prosecution as well. I'm
6 saying that in the perspective of a possible reply from the Kilenda team as well.

7 Now, we are now going to suspend the hearing. The Prosecutor shall finish with the
8 rebuttal, you will have a moment to reply to that rebuttal and then we shall have a break
9 now. The hearing is suspended.

10 (Recess taken at 10.59 a.m.)

11 (Upon resuming in open session at 11.30 a.m.)

12 THE COURT USHER: All rise.

13 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Our hearing shall now
14 resume. Mr Prosecutor, if you could please continue with your rebuttal to the final
15 remarks from the two Defence teams. Please proceed.

16 MR MACDONALD: (Interpretation) Thank you, your Honours. I would now like to
17 hark back to two points, I just have two points, and also in light of the comments that
18 were made regarding a possible rebuttal and this is really part of the message that we
19 wish to deliver to the Chamber.

20 The evidence lies before you. You have the transcripts and I think it's important, despite
21 the immense task and the difficult task of reviewing all the testimony and all the evidence
22 on the record, I think it really would be very wise to go back to the very source, that is to
23 say the transcript, 323.

24 Yesterday, the Ngudjolo team -- transcript 339, page 24, lines 11 and on. The Ngudjolo
25 team spoke of Witness 323 and how he was called back to give further testimony via

1 video-conference. It was specified that 323 said at that time that he had got to Bogoro
2 because the accused, Ngudjolo, had taken him there.

3 I would just like to remind you of the background when that witness gave that reply.
4 I think the Chamber will recall that in a ruling the Chamber ordered the Prosecution to
5 take the necessary measures so that 323 could be called back, and discussions were held
6 with the Registry to organise a video-conference and it was mainly the Registry that
7 moved ahead on that particular issue and organised that video-conference and the arrival
8 of the witness, rather than a video-conference.

9 No, it was at the request of the Chamber, and it was to shed light on the issue of the
10 identity of 268. It was the only purpose of that witness coming back. That was the only
11 reason. It was not to reopen the entire debate.

12 So I would encourage the Chamber to go back to the transcript, and I will actually quote
13 the witness, page 16. The witness himself spontaneously replied, saying that, "Well, the
14 problem is I got to Bogoro and I told you that I fought in Bogoro and it was Ngudjolo who
15 had taken me there. We fought in Bogoro, and that is what I told you. It was Bogoro.
16 It was Ngudjolo who took me to Bogoro to fight there."

17 Now, I don't want to speculate, but we would argue that this may be a way of speaking
18 of -- the witness's way of speaking. He said that because of Ngudjolo he went to fight in
19 Bogoro, and there was an objection when the Defence wanted to return to that issue for
20 one single reason. That witness had provided earlier statements, that had been disclosed
21 on a number of issues, and we provided explanations at that time in response to the
22 objection. We said that this was not a new fact, that the Defence had had all the time
23 necessary to cross can examine the witness on that issue, and it was not particularly useful
24 to return to the issue at that particular time.

25 Your Honour, one thing is for sure: Witness 323 was in Bogoro in the UPC camp. It's

1 clear that when he speaks in this manner it can't be Mr Ngudjolo who took him, taking
2 him by the hand to Bogoro. The witness was already there. It was the Ngiti-Lendu
3 attack that led him to fight in Bogoro. That is the point.
4 Now, one last point that the Prosecution would like to revisit: P-250 and the report cards,
5 EVD-D03-00005 to 00009. This person's report cards. I think, once again, we need to
6 consider the context. During cross-examination of the witness, we did show him his
7 report cards and he said, yes, that they did seem to be the report cards for his education.
8 And there was -- there was an objection from the Prosecution, the Chamber ruled and
9 allowed EVD numbers to be attributed, and furthermore we said that D03-100 was
10 supposed to come and give testimony because he was the one who actually had
11 possession of those report cards. D03-100 did come and give testimony, but the exhibits
12 were never shown to him so that he could authenticate their origins. Why? Why was
13 that not done at that time?
14 Furthermore, your Honour, we wish to draw the Chamber's attention to the answers
15 regarding the education; the answers from D03-100 in light of the exhibits. We would
16 argue that the testimony of D03-100 and the exhibits do not match the account of the
17 person's school career.
18 Finally, be it for 250, or certainly for D03-100, it's important to remember what he said,
19 transcript 310, page 47, regarding the circumstances that led him to giving testimony
20 before this Chamber. The witness said that he had been threatened with death by the
21 Ngudjolo's family and, given that context, he came and he gave testimony.
22 So there you have it, your Honour. Those were the points that we wanted to revisit. I
23 wish to thank you all, your Honours.
24 PRESIDING JUDGE COTTE: (Interpretation) The Chamber in turn thanks you,
25 Mr Prosecutor.

1 Mr Hooper, would you like to provide some sort of rebuttal to what the Prosecution has
2 just said? This is your last opportunity before Mr Katanga takes the floor.

3 MR HOOPER: Yes, I think there's just a short response from Mr O'Shea.

4 PRESIDING JUDGE COTTE: (Interpretation) Very well. Mr O'Shea, please proceed.

5 MR O'SHEA: Yes, your Honours, briefly on the two issues raised by my learned friend,
6 Ms Luping.

7 First of all, in relation to Regulation 55, in my respectful submission the question that the
8 Chamber is faced with here is not whether the Prosecution has given notice at any time
9 during the course of the proceedings, pre-trial or trial. The question is whether the
10 Prosecution has given the Chamber a sufficient opportunity for the Chamber to provide
11 notice to the Defence in terms of Regulation 55. That is the appropriate question, and for
12 the purposes of that question everything that takes place before the confirmation decision
13 is, in my submission, irrelevant. Paragraph 13 of the document summarising the charges
14 has a footnote, and that footnote makes reference to the Prosecution's position prior to the
15 decision confirming the charges.

16 Now, on to the second point, which is the point concerning the crimes against humanity
17 charge. I'm grateful to my learned friend for raising the Appeals Chamber decision of
18 Fofana. I concede that there is an inconsistency between the Appeals Chamber decision
19 in Fofana, before the Special Court for Sierra Leone, and the finding of the International
20 Criminal Tribunal for the Former Yugoslavia in the case of Kunarac, and it is my
21 respectful submission that the International Criminal Tribunal for the Former Yugoslavia
22 in Kunarac is correct and that the Appeals Chamber in the Special Court for Sierra Leone
23 is incorrect.

24 In the Special Court for Sierra Leone Appeals Chamber, at paragraph 300, as cited by my
25 learned friend, the Appeals Chamber suggests that the purpose of the attack is immaterial.

1 I can accept that personal motives might be immaterial, but that the purpose of the attack
2 is immaterial is, in my submission, incorrect.

3 If one goes back to paragraph 19 of the Appeals Chamber decision in Kunarac, the same
4 paragraph which I cited previously, the Appeals Chamber goes on to say, "In order to
5 determine whether an attack may be said to have been so directed, the Trial Chamber will
6 consider inter alia the means and methods used in the course of the attack, the status of
7 the victims, their number, the discriminatory nature of the attack, the nature of the crimes
8 committed in its course, the resistance to the assailants at the time and the extent to which
9 the attacking force may be said to have complied or attempted to comply with the
10 precautionary requirements of the laws of war."

11 Now, clearly means and methods used, discriminatory nature of the attack, which of
12 course does not necessarily apply here, but it's simply for explaining that decision before
13 the Yugoslav tribunal, and the issue of whether one is complying with the laws of war, all
14 of those - all of those - go to what is the object of the attack. They are all relevant to the
15 object of the attack, and plainly the purpose comes into that equation.

16 It should be recalled that in the Special Court for Sierra Leone they were dealing with a
17 situation quite different from the situation before this Court. In the situation in Sierra
18 Leone, the Kamajors, who were essentially a sort of a rebel group fighting in the interests
19 of the government, were accused of committing crimes all over the territory of Sierra
20 Leone; the entire territory of Sierra Leone.

21 And as noted in paragraph 301 of the Appeals Chamber decision itself, the methods used
22 included collecting up civilians. I also note that they were charged with joint criminal
23 enterprise with the RUF and the AFRC.

24 THE INTERPRETER: Message from the interpreters: If Mr O'Shea could slow down,
25 please. Many thanks.

1 MR O'SHEA: We're dealing with situations where civilians were quite deliberately
2 attacked on a massive scale and in quite a brutal manner.
3 So the facts are quite different to the situation here, and the question when determining
4 what does "directed against" mean, because that's the essential question here, what does
5 the term "directed against" mean for the purposes of crimes against humanity? That
6 question must be determined, in my submission, having regard to customary
7 international law. We are here dealing with crimes against humanity. Let us not forget
8 what the origin of that crime is and what its development is in custom.
9 This crime is aimed to be directed against the most atrocious crimes against humanity,
10 and finds its source in the events of the Second World War. In my submission, if one
11 were to belittle the expressions in that light, it would belittle the meaning and sense of
12 crimes against humanity. Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr O'Shea. Mr Kilenda.

14 MR KILENDA: (Interpretation) Thank you for allowing me to address the Court.
15 Both of us will be speaking, once again, in a very serious way and we shall briefly respond
16 to the points raised by the Prosecution.

17 First of all, his first point, on behalf of the Ngudjolo Defence team, I wish to reassure the
18 Prosecutor that if he ever had the impression or the feeling that we ever went overboard,
19 well, this was not a correct reading or assessment of the situation.

20 We remember the trip to the area; it was a very fine voyage, both professionally and
21 personally, and we would never make any observations about the Prosecution. I know
22 that a number of expressions were used, for example, corruption of witnesses, and really,
23 there was no personal attack intended.

24 The third point, the Samba letter. What we are saying is that the Prosecution did not
25 investigate this item. I think you shall recall, your Honour, after 159 testified the

1 Prosecutor went back to the field and made further investigations. After those
2 investigations, that witness was withdrawn. I think you'll recall, your Honours, that
3 when we looked at the birth certificates of P-279 and another witness, the Prosecution
4 went back to the field and conducted investigations, and in his final brief said that he was
5 not going to rely on those two.

6 Remember all the various investigations that the Prosecution conducted, and we did not
7 see the same sort of thing when discussions were held regarding the Samba letter. We
8 are just saying that the Prosecution did not investigate and has not done so up until now.

9 Now, the Prosecutor could always withdraw charges. So there you have it, your Honour,
10 I don't want to belabour the point, but the Ngudjolo Defence team stresses once again we
11 did not conduct any personal attack on the Prosecution. We have the highest respect for
12 the OTP team, and at no point did we mention any actual names. We always spoke of
13 people by mentioning their roles by, for example, paragraph 617 and 618. There might
14 have been a word or two about the Samba letter, but nothing seems to be on the record
15 showing that there were other people responsible for the attack on Bogoro. That is not
16 what we said. We said they did not investigate.

17 How can it be that the Prosecutor did go and investigate the birth certificates of two
18 witnesses, yet did not have the courage to go and investigate a letter that came from the
19 office of the head of the Congolese state? This has all led us to the situation we now find
20 ourselves in.

21 And after all, the Congolese governments and the Head of States said they would
22 co-operate. After all, they deferred the situation to the OTP. It would appear that this
23 attack, the decision may have come from your office. So there you have it, your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Fofé.

25 MR FOFÉ: (Interpretation) Thank you, your Honour. I shall continue, but I do want

1 to stress one point: That we are speaking to our learned friends in a very professional
2 way. We are taking all precautions. Inevitably, a number of times in the trial there are
3 very lively debates or discussions, but we never attack our colleagues.
4 We were talking about the Prosecutor in a general way. We did not even mention the
5 gender of the person. We were really speaking more to the role, the function. Now that
6 being said, I did meet with the Prosecutor on a number of points. First of all, Dr Adirodu.
7 Perhaps I did not make myself clear. I would like to say the following regarding
8 Dr Adirodu: When I quoted one excerpt from the Prosecution's arguments, and I
9 mentioned that the situation was vague or -- why did he take that to mean Dr Adirodu?
10 We know that he did have an interview with Dr Adirodu and we did receive the
11 statement prepared. Through my question I wanted to -- I really wanted to ask the
12 following question: Why did you not choose to call Dr Adirodu as a witness and have
13 him come and speak to us about the FRPI? Because he was the one who went to Beni with
14 the FRPI. We stress that this structure was known to the headquarters of the Congolese
15 armed forces. I stressed that this person was more important.
16 The Prosecutor should not have -- well, this is my point of view, of course, the Prosecutor
17 should not have abandoned this person, as they did with Ndjabu, as they did with Manu.
18 Why abandon relevant witnesses and instead opt for lesser witnesses? The question is
19 out there, your Honours.
20 The Prosecutor has just said, and I believe it was before the break, he said today that the
21 presence of the FAC was not mentioned in our case, but that is not so. Prosecution
22 Witness P --

23 PRESIDING JUDGE COTTE: (Interpretation) Are you talking about your case, your
24 record, or the Samba letter? The Prosecution mentioned the Samba letter a few moments
25 ago, and I think you just said that the word "FAC" was -- in any event, let us try to be very

1 clear on this point. Please go ahead.

2 MR FOFÉ: (Interpretation) Five seconds, your Honour. So, indeed, that is the point,
3 that is the statement that I reacted to, saying that we had evidence on file that mention the
4 presence of four FAC battalions in Beni.

5 P-30, I also wish to draw your attention, your Honours, to the following exhibits:
6 EVD-D03-0032, EVD-D03-00033. These are video clips that have been commented upon
7 by P-30 and mention is made of four FAC battalions in Beni.

8 P-30 was also questioned about UPC communiqués that were on the site of the UPC, and
9 this is to be found EVD-D03-00034, EVD-D03-00035, EVD-D03-00036, presence of FAC
10 battalions. Another point regarding D03-176, the Prosecutor has criticised me for
11 choosing that case and makes reference to an oral decision from the Chamber after the
12 event, and I believe it was -- the oral ruling goes back to 7 September 2011, I believe so.
13 We can check that point.

14 If I said 11 September, it must have been a misspeak. It was an oral ruling that, to our
15 understanding your Honour, reminded us of a principle: Why is it that the
16 Defence counsel, in response to what we saw as an irregularity, why did Defence counsel
17 rise to object? Well, because we know that things did not occur in that manner.

18 When two people are being put on trial together as co-accused, and when one of the
19 co-accused produces a witness and the Prosecution uses that witness against the other
20 co-accused, he must behave as if he were conducting an examination-in-chief. That is
21 how things are to be done. That is why the Defence counsel rose to make an objection.

22 We acknowledge that it was on 7 September, after the remark made by our learned friend
23 Mr O'Shea, that is when things became clear and the Chamber gave its oral ruling, yes.

24 I'd also like to stress that when the Prosecution gave the reply regarding D03-- Witness
25 370, it must be stressed that that witness talked about the presence of the FNI in Zombe at

1 the time, and that Mr Ngudjolo was the commander of the FNI at the time, which is
2 untrue, because we all know that the FNI did not exist at that time.

3 As for 323, Witness P-323, I would like to say that the Prosecutor has just provided us
4 with his own interpretation of the reply given by P-323. What he has just said is his
5 interpretation of the witness's reply, to say, "Well, the witness did or did not want to say
6 this or that." Clearly, we are interested in the witness's answer proper and not in the
7 Prosecutor's interpretation of the witness's answer.

8 We were surprised, Mr President, your Honours, by the witness's answer. A UPC
9 soldier who participated in the battle of 24 February 2003 as a UPC soldier, when he
10 testified he never mentioned Mathieu Ngudjolo previously, but then we see that witness
11 on the screen at a video-conference who then says that it is Mathieu Ngudjolo who took
12 him there, and that is why we thought that this was such an absurd situation that needed
13 to be clarified.

14 You see, a trial is dynamic. Things happen unexpectedly during trials, and so faced with
15 that situation should we lock ourselves up in the thought that there was a specific idea or
16 purpose? Well, here we had a witness's answer which actually took us away from the
17 very purpose of the video-conference.

18 With that unexpected item popping up we needed clarification, but the Prosecutor
19 refused to do so. He refused to give us that opportunity to clarify the situation, and we
20 came to the conclusion therefore that it was in the Prosecutor's interest for the situation to
21 remain unclear.

22 Let me also underscore, Mr President, your Honours, that this reversal of position by the
23 witness was actually incriminating against Mathieu Ngudjolo, but it is an absurd -- such
24 an absurd situation that it cannot be taken into consideration, or that really doesn't have
25 value.

1 Now, as for Witness 250, the President, or the Prosecutor rather, has just spoken about
2 Witness 250's school record, or report card, and he says that the report card was shown to
3 P-250 who allegedly said -- and I am somehow quoting the Prosecutor, who says that the
4 witness says that it appears to be his report card, but that's what the Prosecutor just said.
5 Your Honours, no, that is not the case. P-250 did not say that it appears to be. No, he
6 actually acknowledged that they were indeed his report cards. He even went as
7 far -- and I am speaking off-the-cuff here. He went as far as stating that there was some
8 information that was lacking from his school file. He acknowledged indeed that it was
9 his report card, and then added that by the way such-and-such an element is missing from
10 the record.

11 Therefore, the Prosecutor has criticised us because we called D03-100 and did not show
12 him those records, or those report cards. Mr President, your Honours, why did the
13 Prosecutor not do so? These documents, or this evidence, is on record. If the
14 Prosecutor wanted to challenge the authenticity of those documents, and the onus of
15 proof following on him and not on the Defence, once P-250 acknowledged or recognised
16 the report cards that was good enough for us.

17 Now, D03-100 came and provided additional information to confirm that P-250 was not in
18 Zombe. You do recall D03-100's testimony. If at that time, your Honours, the
19 Prosecutor wanted to challenge the authenticity of those report cards, it was up to him - it
20 was up to him - to show D03-100 those reports and raise the relevant questions.

21 So Mr President, your Honours, I am not going to revisit all the other alleged threats and
22 what have you which we have talked about. All the material is on the record. Witness
23 D03-100 talked about those things in the circumstances that you are familiar with, but let
24 me say simply that those alleged threats have no bearing whatsoever on the lies - on the
25 clear lies - that were told by P-250 to your Chamber .

1 For example, P-250 gave a statement to the OTP Prosecutors in which he said that his
2 parents had died. That is a lie; a lie which in effect has no link to D03-100's testimony.
3 Second lie about his age, his date of birth. P-250 lied about his date of birth, but that too
4 has no link with or to the alleged threats against D03-100. The fact that P-250 stated that
5 the FNI was present at the time has no connection to D03-100's testimony.

6 So, Mr President, that is all that I can say and I thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Maître Kilenda.

8 MR KILENDA: (Interpretation) Mr President, it might be useful for all to get
9 clarification from -- about page 54 of the transcript, line 27 and 28, in which it is said,
10 "I would like to underscore that when the Prosecutor provided the answer to D03-0370,
11 and in reference to Mathieu Ngudjolo, his ..." --

12 PRESIDING JUDGE COTTE: (Interpretation) Let us correct that point immediately.

13 MR FOFÉ: (Interpretation) I was referring to Witness 323, P-323. Thank you, your
14 Honours.

15 PRESIDING JUDGE COTTE: (Interpretation) That is corrected in a timely manner, and
16 I thank you. We all know that Article 67(1)(h) provides that accused persons can make
17 written or oral statements, and Rule 142 also provides that the last word will go to the
18 Defence.

19 In its decision on the scheduling of the oral arguments, the decision of 20 April 2012, the
20 Chamber decided that it was up to the Defence to state whether Mr Katanga or -- and
21 Mr Ngudjolo intended to make an oral statement pursuant to Article 61(7)(h) of the
22 Statute.

23 Mr Ngudjolo's Defence team, through Maître Kilenda, informed the Chamber in writing
24 on 3 May 2012 that Mr Mathieu Ngudjolo indeed was going to make a statement and that
25 he would take the floor last.

- 1 Mr David Hooper, at our hearing of 16 May 2012, also told us orally that Mr Germain
2 Katanga also intended to make a statement - an oral statement - and to thus speak in last
3 place.
- 4 The Chamber informed Mathieu Ngudjolo that he would have a time slot of 30 minutes
5 maximum, which he intends to use. Mr Hooper told us that Mr Katanga intended to
6 take 15 minutes, but the Chamber is of the position that, if he would speak for more than
7 15 minutes, he has up to 30 minutes to do so.
- 8 It is 12.10 now, and we would now give the floor to each of the accused persons to speak
9 either for 30 or 15 minutes, and then we would ask each of them, Mr Katanga starting first,
10 to speak while standing up so that they can be seen properly. They are taking the floor
11 in their own case, and so I believe that we are going to make it convenient for them to
12 read from a rostrum and so I would like to check with Mr Katanga whether he has a stand
13 and how he intends to proceed. Mr Katanga?
- 14 MR KATANGA: (Interpretation) Your Honours, I think that it would be proper for all
15 the arrangements to be made for me to speak conveniently.
- 16 PRESIDING JUDGE COTTE: (Interpretation) Is it possible then to provide a rostrum or
17 a lectern, or what do you want to do? Well, if you are standing up, then your
18 microphone has to be positioned in such a way that the Court can hear you properly.
- 19 So, Mr Katanga, please rise and we would like to listen to you. I believe that you are
20 going to address the Court in French, or is it in Lingala?
- 21 MR KATANGA: (Interpretation) In French and --
- 22 PRESIDING JUDGE COTTE: (Interpretation) And Mr Mathieu Ngudjolo will be
23 speaking in Lingala; is that the case?
- 24 MR NGUDJOLO: (Interpretation) Yes, indeed.
- 25 PRESIDING JUDGE COTTE: (Interpretation) Is there provision for interpretation into

1 Lingala?

2 THE COURT OFFICER: (Interpretation) Yes.

3 PRESIDING JUDGE COTTE: (Interpretation) Now, Mr Katanga, I would now give you
4 the floor to address the Court and we are listening to you.

5 MR KATANGA: (Interpretation) Mr President, your Honours, good afternoon.

6 I would like to thank you, first of all, for giving me the floor.

7 You are all aware that I was the second person to come to the ICC.

8 I was transferred to the ICC on 18 October 2007 having already been held in detention at
9 the central prison in Makala in the DRC since 9 March 2007.

10 Four months after my arrival here, Mathieu Ngudjolo, a co-accused in this case, joined our
11 group on 3 February 2008. The trial then began and trudged along until this last phase of
12 the arguments at which the President and your Honours have authorised me to say a few
13 words to the Chamber.

14 Today, my thoughts go out to all the victims of the conflicts in Ituri in general and
15 particularly the conflict in Bogoro. My thoughts go out to all those who have lost loved
16 ones, who have lost their property and their wealth. For all those whose pride and
17 dignity have suffered, I extend to them my compassion in regard to all the suffering that
18 they have suffered because of the foolishness and wickedness of human nature.

19 Needless to revisit all that has transpired during this trial, needless to talk about the
20 various incidents that occurred throughout this trial whose epicentre, as we all know, is
21 the attack on Bogoro on 24 February 2003.

22 Today, all eyes are on the outcome or focused on the outcome of this trial. Everybody,
23 including myself, is impatient to see the light of truth on the Bogoro events emerge, these
24 events for which I am here to plead that I am innocent. All I can say is the truth, all I can
25 tell you is the truth and nothing but the truth.

1 I was not in Bogoro, and I did not plan this attack. Many would have liked to see this
2 truth covered up so that they may continue to run around freely, but thanks be to God
3 because this has not happened. This Trial Chamber was able to courageously transcend
4 all the obstacles and is now at this concluding phase of the trial.

5 Our greatest wish as we come to the end of this trial is that those who are truly guilty of
6 these acts should be punished and that -- should be identified and punished while victims
7 are recognised and rehabilitated. You see, that will also help to ensure that all the
8 victims receive support at all times.

9 Having come to this phase in record time, as compared to the Thomas Lubanga trial, for
10 all parties and participants this must be a time of expression of satisfaction because
11 without the joint effort of all and sundry such an achievement of arriving at this phase
12 would have been impossible.

13 I therefore would like to salute the clear-mindedness and the upright nature and honesty
14 of the Judges who have conducted these proceedings in such a manner that all of this has
15 happened. You have shown proof of composure and understanding, and this has
16 facilitated our proceedings.

17 I also want to salute the determination of the Office of the Prosecutor as they sought to
18 advance these proceedings. The OTP participated in our field trip in January 2012, and
19 this bears testimony to this desire to visit the crime site in order to cross-check the
20 veracity and validity of the reports of the NGOs that were published on this matter,
21 particularly in relation to the number of persons allegedly who died at the Bogoro battle,
22 most of which are more of imaginary numbers than actual facts.

23 I also want to extend my thoughts to the child soldiers and victims who are the
24 corner-stone of this trial. As the interests of victims are upheld, justice also takes root. I
25 want to thank them for their participation in this trial.

1 Mr President, your Honours, allow me also to extend warm greetings to my Defence team
2 for the remarkable work that they have done. They have been wise throughout this trial,
3 stressing all along on the strength of the facts and highlighting legal arguments that are
4 devoid of any assumptions and prejudices.

5 This intellectual prowess is sign of their courage and perseverance which enabled them to
6 deal with all the challenges of the trial. It never gave up in spite of the complications
7 from the Congolese authorities in the DRC, particularly from Kinshasa.

8 This is also the opportunity for me to recognise the courage of two ladies, Caroline and
9 Sophie, who almost lost their lives in Aveba when skirmishes broke out between elements
10 of the FRDC who were pillaging and Military Police officers when they were conducting
11 interviews of potential witnesses.

12 Thanks be to God that MONUSCO intervened and the worse did not happen. Allow me
13 also to thank Mathieu Ngudjolo's Defence Counsel for working on his behalf as my
14 lawyers have done, too, on my behalf.

15 Mr President, your Honours, when you would have come to the end of these deliberations
16 and proceedings, you would come to a verdict, to a decision. This is a matter that is a
17 heavy responsibility on you and on your conscience. As I have already stated, I was
18 exactly 24 years and nine months old on the day of the Bogoro attack of 24 February 2003.
19 I was born to a poor family which, however, had what it needed. I used to live with my
20 parents. I was entirely dependent on them. And, by the way, my uncle and my
21 father -- my uncle, when I was very young, and my father when I went to join his family
22 in Aveba at 20, were those who took care of me. I was the son of an ordinary nurse, A3,
23 who had no salary but who was treating lepers and those who had tuberculosis.
24 Ordinarily, I am a timid person, but before this Court and before the Judges I do not feel
25 shy and I feel no fear. I have respect for them. First of all because of the nature of their

1 work, the work that you do, Mr President, your Honours, because I believe that rendering
2 justice is a noble yet exacting and difficult task, because it calls on you to show proof of
3 great moral quality, such as patience, a sense of humanity, justice, correctness, a sense of
4 truth, and so on and so forth. These are values that are very rare when it comes to the
5 ordinary men and women that we are.

6 This world is quite unfair, quite unjust, and it takes an extraordinary effort to render
7 justice in a just and equitable manner. Therefore, these expectations of you make of you
8 superhumans, exceptional human beings.

9 When I was still very young, I was taught not to fear my parents but to respect them, and
10 to respect those who were as old as my parents all who, quite simply put, were older than
11 me. I cannot deny, however, that at the beginning of this trial I was frightened by what
12 was happening to me, but as things unfolded I became familiar with everybody and
13 became comfortable enough to answer questions and even listen to the false accusations
14 that were levelled against me and which, in fact, do hurt me quite deeply.

15 I feel deeply hurt, but there is nothing I can do because this trial is not yet over.

16 Considering my age, I have no choice but to worry, to be anxious, because I don't know
17 any young person of my age who can be insensitive to all the accusations that the
18 Prosecution has levelled against me.

19 It was not really my choice to be the last to testify, but that is how things unfolded.

20 Before I came to The Hague, I was held in detention in Kinshasa, and it was very easy to
21 find me. If the Prosecutor had really wanted to obtain information on my thoughts
22 about Bogoro, he could have interviewed me through his various services before issuing
23 an arrest warrant against me. Then today he would simply have had to determine
24 whether I contradicted myself or not. All I have done is speak the truth, without being
25 prompted by anybody whosoever.

1 In any event, the stakes are very high first of all regarding the victims, and as champions
2 of international justice the victims expect to be honoured by the decision that you will
3 come to. The Chamber needs the victims, victims of facts and not victims of history, to
4 be able to come to its determination. The credibility and the honour of the ICC hinges on
5 this matter. The decision that you will come to must not be one that upholds justice for
6 the powerful against the weak; justice for the great, or the mighty, against the small ones.
7 And finally regarding my country, the DRC, today faced with war and insecurity, your
8 decision - your verdict - must work towards the promotion of peace by checking impunity,
9 by seeking out the true suspects who are still at large, the intellectual perpetrators of these
10 crimes, the suppliers and so on and so forth. This decision must also uphold the
11 principle of equality of all and sundry before the law.

12 These stakes are high indeed, and many people would like to direct or guide your
13 direction, guide your decision, towards their own expectations so that at all cost, either
14 using scapegoats contrary to what the facts point to, you may be inclined in that direction.
15 I have had experience here within this Court and this Chamber, and, Mr President, your
16 Honours, I do not see you being led in that manner to disregard the evidence pointing to
17 my innocence as put forth by my Defence team.

18 The stakes are, therefore, in your hands; you and history and your conscience. I can
19 assess for myself what a heavy responsibility this is upon you, but I believe that you will
20 act independently with neutrality and with impartiality.

21 It is true that this decision is one that requires Herculean courage from you and an
22 audacious spirit, but I am convinced that your conscience will lead you to come to a
23 choice of the truth that is devoid of any consideration of these bodged findings by the
24 Prosecutor in his investigations.

25 Mr President, your Honours, thank you for your patience. I would like to conclude by

1 asking for justice to be done in all fairness, mindful of the truth and the facts and the solid
2 nature of the evidence before you.

3 I thank you, Mr President. Thank you, your Honours.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Katanga, for
5 this statement.

6 Mr Ngudjolo, I don't know if you wish to take advantage -- yes, okay. So please do use
7 that lectern and please do switch on your microphone as well. We are listening to you.
8 You have the floor. It is your turn.

9 MR NGUDJOLO: (Interpretation) Good morning, your Honour. Good morning, your
10 Honours.

11 I have been here since February 2008, available to you until this very day. We are
12 coming to the end of the trial, and in a short time you shall withdraw to deliberate and
13 decide on the fate of each one of us.

14 You have followed the Prosecutor, the victims, the counsel of Germain Katanga, and you
15 have also followed my own counsel as well as my testimony given under oath. The time
16 that I have spent here has made it possible for you to get to know me well.

17 The Prosecutor accuses me of having been the highest commander of soldiers of the FNI
18 and that Germain Katanga was the president of the FRPI, and that together we set up a
19 plan of attack on Bogoro on 24 February 2003 and also we participated in this attack and
20 during this attack we committed crimes within the jurisdiction of the International
21 Criminal Court.

22 With a view to negotiating this plan of attack, well, the Prosecutor states that I sent Boba
23 Boba to negotiate with Germain Katanga in Aveba, and in order to demonstrate that we
24 did commit these acts the Prosecutor has brought witnesses, videos, as well as
25 documentation.

1 The victims, for whom I have a great deal of respect, have gone in the same direction as
2 the Prosecutor. Some witnesses for Germain Katanga, such as D02-148, stated that Bahati
3 de Zumbe directed the soldiers from Zumbe with Kute. D02-176 also stated that I was
4 the commander - the highest level commander - of the soldiers of the FNI from the
5 groupement Bedu-Ezekere.

6 Since I arrived here, your Honour, your Honours, I have refuted all the accusations and to
7 this day I continue to do so, everything that the Prosecutor has stated about me, as well as
8 the witnesses and the witnesses of Germain Katanga, such that you know why I'm
9 refuting these accusations.

10 Well, I've also brought my witnesses. I used documents as well as video, which the
11 Prosecutor himself has used. At the end of the day, you have followed the testimony
12 which was given under oath. You have followed how a nurse that I was became a
13 soldier. I showed my life since my childhood until my arrest on 6 February 2008, which
14 was followed by my transfer here to the prison of the International Criminal Court in
15 Scheveningen. Since I have been here, you know everything that has happened.

16 Your Honour, your Honours, if I had committed the crime, the crimes that I'm accused of,
17 that the Prosecutor accuses me of, I would have pleaded guilty and I would have
18 explained why I would have committed such acts, but the statements made against me
19 brought here by the Prosecutor, saying that I confessed to P-317, Madam Sonia, P-219 and
20 P-212, about the war in Bogoro, are a huge lie. Everything that the Prosecutor has said
21 about me concerning P-250, P-279 and P-280, as well as some witnesses, is also a huge lie.
22 Since August 2002 until March 2003 I was a nurse at the health centre in Kambutso, which
23 I myself had built. I was not the highest level commander of the FNI, nor of the FRPI,
24 and I was not part of any military group in Ituri.

25 As I indicated during my testimony, the people who fought on 24 February 2003 in

1 Bogoro were the government of Congo, Kinshasa, so the FAC, Ugandans, UPDF and the
2 RCD-K/ML of Mbusa Nyamwisi, the APC and the FRPI. They went -- having driven out
3 the UPC from Bogoro, they went to prevent people from returning to Bogoro.
4 Nevertheless, neither the people from Zumbé took part in the battle of Bogoro.
5 Furthermore, D03-55, who also -- one of my witnesses, stated that the Ngiti witnesses who
6 were present had asked them for money in order to pass -- well, they wanted to go to
7 Tchomia and well as -- on their return. If the people from Zumbé had participated in this
8 battle, the Ngiti soldiers would never have asked them for money.
9 The battle of Bogoro had the Hema, the Bahema, the Walendu and the Ngiti. No,
10 contrary to what the Prosecutor stated, it was a conflict between the UPC and the
11 Government of Kinshasa, because the UPC wanted to make Ituri an independent state.
12 You have evidence which does show that this was a conflict between the UPC and the
13 Kinshasa government.
14 From the fact that the UPC drove out Governor Lomondo from Bunia on 9 August 2002,
15 you also have evidence which demonstrates the existence of this conflict. The FRPI was
16 one of the groups which was part of the EMOI which was allied to the RCD-K/ML, and in
17 this regard you also have evidence that demonstrates that. The EMOI included the FAC,
18 the Mai-Mai, APC and the FRPI. The EMOI came under the military framework of
19 President Joseph Kabila Kabange. The FRPI had an interest in helping the RCD-K/ML
20 because they were in a position at the airport. And from a strategic point of view for the
21 EMOI, the position of the FRPI was very advantageous to them given the operation of
22 Ituri, operation in Ituri, and in particular in Bogoro.
23 At the end of the day, Uganda, due to the fact that the UPC had driven out the UPDF from
24 Ituri, well, you also have evidence which does show to you that -- well, how there was a
25 conflict between the UPC and the UPDF, while the UPC had made an alliance between the

1 RCD-Goma on 6 January 2003, RCD-Goma who was an -- which was an ally of Rwanda,
2 Uganda, with a view to driving out its UPC enemies -- well, you saw evidence which
3 shows that the UPC was working together with the enemies of Uganda. For strategic
4 reasons, as I indicated, Bogoro was a strategic point for the UPDF and, in this regard, you
5 have evidence which shows that.

6 For example, the Ugandan rebels from Rwanda came from Bule and, in this regard, you
7 have a video which shows the involvement of Uganda in the battle of Bogoro. Where it
8 concerns the RCD-K/ML, allied with Kinshasa, Ituri was its territory from where it had
9 dislodged the UPC. It had an agreement with Kinshasa and it wanted to recover this
10 territory. You also have evidence that shows that clearly.

11 Your Honour, your Honours, if people from the groupement of Bedu-Ezekere had taken
12 part in this battle of Bogoro, they would also set up in Bogoro after having dislodged the
13 UPC, but they didn't do that because they never left. Bahati de Zumbe, D02-148, a
14 Germain Katanga witness, spoke saying it was he who directed the combatants from
15 Zumbe with Kute. He couldn't be there because Bahati was in Aveba, and so he couldn't
16 go to places -- he couldn't be in two places at the same time because he would have been
17 wounded in the battle of Kisoro on 16 February 2003 in Aveba. He was wounded, and
18 you will -- you've heard Germain Katanga who stated this before you.

19 If the people from Zumbe left for the battle of Bogoro, the person responsible for the
20 young people was known. Mr Jacques Banga Mande, who's dead, and even if he is now
21 deceased, I cannot lie in his regard. His deputy was Martin Banga Deje (phon). I also
22 can't lie about him, even if he hasn't been arrested. If the people from Zumbe had
23 participated in this battle, the person who was responsible for young people was known
24 and it was they who could be the direct people who were responsible. That could not be
25 me.

1 You know that where we are from the chef de groupement have power over everybody,
2 even over the committee of young people. Even Chef Manu stated here, and you can
3 read in the report of 15 November 2002, that the chef de groupement Ngabu Emmanuel
4 himself had drafted the report, and you will note that in the collectivity of Walendu-Bindi
5 the organisation of the war at this time was completely different to that of ours.
6 You know, furthermore, how it was that Ngabu Emmanuel directed his groupement at
7 the time of the war. You will know also -- well, you know the basic structure that was
8 set up in order to direct his groupement at the time of the war since January 2004 until the
9 Artémis forces arrived in June 2003 in Bunia.

10 Your Honour, your Honours, you also heard Germain Katanga, my co-accused, you have
11 followed how he stated that we never did anything together. I never helped him do
12 anything. And myself, I did nothing with regard to this battle.

13 You also know very well how this battle was organised from Beni, and that was the case
14 until the attack on Bogoro. You could know if the people from Zumbe had participated
15 in this battle, but well, he had a phonie radio the day of the battle and he never heard it
16 said that the people from Zumbe had participated in this battle.

17 Those who participated in the battle of Bogoro, they installed themselves from -- so that
18 the UPC would no longer come back to Bogoro from 24 February 2003. The first group
19 was made up of the FAC, the Congolese Armed Forces, and I cannot give a precision with
20 regards to the number of days that they stayed there for.

21 The second group was the APC, and they spent one month there. They were directed or
22 led by Captain Blaise Koka of the APC. The third group, the UPDF, they stayed until
23 7 May 2003. They were led by a major. You have the pictures of this person. And the
24 group that follows was the FRPI. They stayed until 6 November 2003. They were led
25 by Commander Dark, Androzo Zaba, brother of Dr Adirodu Mawazo, and they stayed

1 until the soldiers, the Bangladeshi soldiers from MONUC came to Bogoro, and it was only
2 at that time that they left the locality; that is to say, that it was the groups that drove out
3 the UPC from Bogoro, the ones I've just mentioned, I mentioned all the groups, and the
4 commander who led them.

5 At this time, it was President Joseph Kabila who was Head of State. And the director of
6 the cabinet, the deputy director of their cabinet, was called Professor Samba Kaputo, who
7 is dead. The Chief of Staff of the FAC was Lieutenant-General Luwanga. The EMOI
8 commander in Beni - in Beni - was Colonel Aguru. Then after that Colonel Duku arrived
9 on the scene, he was in -- at CONADER in Bunia, and finally Colonel Kilebele who died.

10 The officials of the RCD-K/ML were Mbusa Nyamwisi. The Chief of Staff of the APC
11 was General Kasereka. The APC commander in Bogoro was Captain Blaise Koka. The
12 FRPI in Bogoro had as their commander Dark Androzo Zaba, the brother of Dr Adirodu
13 Mawazo.

14 In Uganda, the Head of State was President Yoweri Kaguta Museveni. The sector
15 commander of the UPDF in Bunia was General Kale Kayihura. The UPDF commander in
16 Bogoro was a major; you know his story.

17 Now, if we were to put Professor Samba Kaputo and Colonel Kilembe beside one another,
18 because the second person is dead you see, you would see that all the other people I
19 mentioned are still alive. If we set those two aside, all the others are still alive.

20 One of Mr Katanga's witnesses, D02-176, stated that, "I was the one responsible for the
21 FNI soldiers within the Bedu-Ezekere groupement. Germain knows very well how I had
22 joined the alliance between the FRPI and the FNI of Floribert Ndjabu after 22 March 2003
23 in Bunia. Germain Katanga knows full well that, furthermore -- well, the way we met
24 one another the very first time that was on 8 March 2003 in Dele. With him was Captain
25 Blaise Koka from the APC."

1 In the documents relating to the cessation of hostilities agreement of 18 March 2003, those
2 facts are to be found. In those documents, it's quite clear that myself and Floribert
3 Ndjabu and Germain Katanga and other people signed this document all together; and if
4 you look carefully at the document, you will see that I signed at the spot where the
5 representative of the north Lendu community was supposed to sign.

6 Floribert Ndjabu signed on behalf of the FNI, and Germain Katanga signed on behalf of
7 the FRPI. It was necessary for Germain Katanga to tell his witness, D02-176, that I was
8 not the head of the soldiers of the FNI within the Bedu-Ezekere groupement. I was not
9 their leader.

10 Witness D02-148 said that Bahati of Zumbe - Bahati of Zumbe - Kute led the soldiers from
11 Zumbe, whereas Bahati was in Aveba. He was wounded at the Kisoro battle on
12 16 February. Germain Katanga himself said so before the Chamber.

13 Finally, the Katanga Defence team did agree that I was not present when the attack on
14 Bogoro occurred; not when it was prepared, not when it was carried out. You can see
15 that for a fact in the paragraph of their final brief, paragraph 1205, at page 477.

16 Everything that the Prosecutor has brought before the ICC, well, there have been no
17 problems with identification. So why is it that when it comes to me they say that I was
18 responsible for the FNI soldiers? And for that the Prosecutor asked the Judges to issue
19 an arrest warrant for me.

20 What would -- what would it take to show that I was not responsible for the soldiers of
21 the FNI? And then the Prosecutor continued to describe me as the person responsible for
22 the FNI within the Ezekere group only. Today he has changed his tune and says that
23 I was the person responsible for the Lendu militia within the Bedu-Ezekere groupement.
24 What can we make of all of this? What must we consider? I was a nurse at the health
25 centre in Kambutso, and I think there's evidence that shows that quite clearly, your

1 Honours. I think you do have that evidence before you.

2 The Prosecutor said that I was responsible for the FNI soldiers within the Bedu-Ezekere

3 groupement. You have his statements, his statements that described me in these ways.

4 It's up to you to decide whether this is true or not.

5 Your Honours, you will be looking at all the charges brought forward by the Prosecution,

6 all the arguments from the legal representatives of victims, the arguments brought

7 forward by Mr Katanga's Defence team as well as the observations from my own team.

8 You have all these various statements.

9 Your Honours, regarding the battle of Bogoro, it was in Bunia after 6 March 2003. That is

10 when people were aware. It was during the meeting with the Ugandan General Kale

11 Kayihura, as well as other UPDF commanders.

12 Now, at the home of General Kisempia Sungilanga, who was a FAC soldier, I learned

13 more things about the EMOI, the truth about that unit; and I discovered other truths here,

14 right here in this very courtroom.

15 When I was in the Bedu-Ezekere groupement, I really didn't know what was going on in

16 the country, but on 24 February 2003 I did hear on Radio Candip, ISP Bunia, that the UPC

17 soldiers had been driven out of Bogoro by the soldiers from Kinshasa who had come from

18 Beni in co-operation with the UPDF soldiers.

19 And so what is my final position? What I can say, in conclusion, is that I never planned

20 the attack on Bogoro with Germain Katanga. I never sent soldiers to take part in the

21 battle. I was never a member of the FNI and I was never a member of the FRPI. I was

22 never a member of any military group or militia within Ituri. I never had any soldiers

23 under my command.

24 My work is one of -- is the work of a humanitarian. I was not a combatant. I was a

25 nurse and I trained community health workers.

1 Your Honours, I thank you very much.

2 PRESIDING JUDGE COTTE: (Interpretation) The Chamber thanks you, Mr Ngudjolo.

3 Now, now that the two accused have given their statements, this trial comes to an end.

4 Before we bid adieu, before the Judges withdraw to deliberate, the Chamber will be

5 announcing the date on which the decision will be issued.

6 Now, before we say good-bye to one another, I would like to mention that Article 61(4) is

7 such that we must conduct the trial in an expeditious (sic) -- in a proper way, and ensure

8 the protection of witnesses, and we have tried to comply with the requirements of this

9 provision despite all the vagaries of the trial, for example the health of various witnesses

10 and certain restrictions here at the Court.

11 I would also like to point out that we have had approximately 240 hearings. As

12 Mr David Hooper pointed out the day before yesterday, there were approximately 3,290

13 applications or other filings. The Chamber issued 130 oral rulings and approximately

14 450 written decisions.

15 The three of us would like to thank the parties and the participants and, of course, this

16 includes the lead counsels, the co-counsels, the Prosecutor but also all those who work

17 with them. We thank you, we thank all of you, for your involvement in the trial, your

18 participation. Thank you for the tone that you have always used, the courtesy that you

19 have always shown, even during rebuttals. And, of course, everyone wished to defend

20 their respective cases vigorously, and all the same you were able to remain courteous.

21 The Chamber also wishes to take this opportunity to thank the legal officers that have

22 helped us on a daily basis; the legal officers, the various analysts working for the

23 Chambers. We also wish to thank all the staff, without whom these -- this trial would

24 not be possible. For example, we shall begin with our court officer; low-key, efficient.

25 Our court ushers. And the court usher who is present today, please pass on our thanks

1 to your counterparts.

2 We thank all the interpreters, the court reporters, the security officers, everyone who
3 ensures that the proceedings in this courtroom proceed smoothly.

4 We also wish to thank everyone who works behind the scenes to ensure that the trial can
5 be carried out properly. We shall be soon announcing the date on which the decision
6 will be handed down. For the time being, we shall now adjourn. This hearing now
7 stands adjourned.

8 THE COURT USHER: All rise.

9 (The hearing ends in open session at 1.17 p.m.)

10 CORRECTION REPORT:

11 The Court Management Section has made the following correction in the transcript:

12 *Page 27 line 3

13 "...rebels or the hunters." Is corrected by "...rebels or the juntas."